Vol.III
5th May, 1955 (Thursday)

LOK SABHA DEBATES

[Part I—Questions and Answers]

VOLUME III, 1955

(20th April to 7th May, 1955)

सत्यमेव जयते

NINTH SESSION, 1955.

(Vol. III contains Nos. 41—52)

Lok Sabha Secretariat
NEW DELHI

CONTENTS

Volume III—From 20th April to 7th May, 1955 — *Columns*

Wednesday, 20th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2399, 2401, 2403, 2405, 2409, 2411, 2414 to 2419, 2421 to 2423, 2426, 2427, 2429 to 2436, 2439, 2440, 2442, 2443, 2400, 2404, 2406 and 2413 . . . . . 2461—96

Written Answers to Questions—

Starred Questions Nos. 2407, 2408, 2412, 2420, 2424, 2425, 2428, 2437 and 2441 2497—2500

Unstarred Questions Nos. 909 to 911, 913 to 945 and 947 . . . . 2500—2520

Friday, 22nd April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2477 to 2483, 2486 to 2488, 2490, 2491, 2493 to 2495, 2498, 2501, 2502, 2504 to 2506, 2508 to 2510, 2512, 2516, 2517 . . 2521—53

Short Notice Question No. 9 . . . . . . 2553—59

Written Answers to Questions—

Starred Questions Nos. 2444-2476, 2484, 2485, 2489, 2492, 2499, 2500, 2503, 2507, 2511, 2513-2515, 2518, 2519 . . . . . 2559—80

Unstarred Questions Nos. 948-983, 985-991, 993 . . . . . 2580—2604

Monday, 25th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2521, 2524 to 2526, 2540, 2542, 2544 to 2547, 2550, 2552, 2555 to 2557, 2559, 2562 to 2564, 2541 and 2538 . . . . . 2605—26

Written Answers to Questions—

Starred Questions Nos. 2520, 2522, 2523, 2527 to 2537, 2539, 2543, 2548, 2549, 2551, 2553, 2554, 2560 and 2561. . . . . . 2626—36

Unstarred Questions Nos. 994 to 1019 and 1021 to 1043 . . . . 2637—60

Tuesday, 26th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2565 to 2568, 2570, 2573, 2574, 2577, 2579, 2580, 2582, 2584, 2585, 2587, 2588, 2590 to 2597, 2599, 2602, 2603, 2578 and 2569 . 2661—94

Written Answers to Questions—

Starred Questions Nos. 2571, 2572, 2575, 2576, 2581, 2583, 2589, 2598, 2600, 2601, 2604 . . . . . . 2694—98

Unstarred Questions Nos. 1044 to 1057 and 1059 to 1070 . . . . 2698—2712

Wednesday, 27th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2605, 2607, 2608, 2610 to 2618, 2620 to 2622, 2624, 2625, 2630, 2632 to 2634, 2638, 2640, 2642, 2645 to 2649, 2651, 2656, 2656-A, 2606, 2628 and 2653 . . . . . . 2713—51

Written Answers to Questions—

Starred Questions Nos. 2609, 2619, 2623, 2627, 2629, 2631, 2636, 2637, 2639, 2641, 2643, 2644, 2650, 2652, 2654, 2655 and 2657 . . . . 2751—57

Unstarred Questions Nos. 1071 to 1104, 1104-A and 1104-B . . 2757—76

Thursday, 28th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2658 to 2662, 2664, 2667, 2670 to 2672, 2674 to 2677, 2679, 2682 to 2684, 2686, 2687, 2689, 2690, 2690-A, 2691, 2692, 2693-A, 2694, 2696, 2698, 2663, 2666, 2685 and 2669 . . . . . . 2777—2815

Columns

Written Answers to Questions—

Starred Questions Nos. 2665, 2668, 2673, 2678, 2680, 2681, 2688, 2693, 2695 2607 and 2699 . . . 2815—19

Unstarred Questions Nos. 1105 to 1118, 1120 to 1127, 1129 to 1153 and 1153-A. 2819—46

Friday, 29th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2700, 2701, 2703, 2706, 2712, 2713, 2715, 2718, 2722 to 2725, 2709 and 2710 . . . 2847—63

Correction of Answer to Starred Question . . . 2863

Starred Question No. 2711 . . . 2863—64

Written Answers to Questions—

Starred Questions Nos. 2702, 2704, 2705, 2707, 2708, 2714, 2720, 2721 and 2726 2864—68

Unstarred Questions Nos. 1154 to 1160, 1162 to 1187 . . . 2868—84

Monday, 2nd May, 1955

Oral Answers to Questions—

Short Notice Question No. 10 . 2885—88

Tuesday, 3rd May, 1955

Oral Answers to Questions—

Starred Questions Nos. 2728, 2729, 2731 and 2732 2889—94

Written Answers to Questions—

Starred Questions Nos. 2727 and 2730 . . 2894—96

Unstarred Questions Nos. 1188 to 1194 . . 2896—2900

Wednesday, 4th May, 1955

Oral Answers to Questions—

Short Notice Questions Nos. 11 and 12 2901—05

Written Answers to Questions—

Short Notice Question No. 13 . 2905—06

Thursday, 5th May, 1955

Member Sworn 2907

Oral Answers to Questions—

Short Notice Questions Nos. 14 and 15 2907—14

Written Answers to Questions—

Short Notice Question No. 16 . . 2914

Saturday, 7th May, 1955

Oral Answers to Questions—

Short Notice Questions Nos. 17 and 18 2915—18

LOK SABHA

Thursday, 5th May, 1955

The Lok Sabha met at Half-Past Ten of the Clock

[MR. DEPUTY-SPEAKER *in the Chair*]

MEMBER SWORN

Shri H. V. Kamath (Hoshangabad).

ORAL ANSWERS TO QUESTIONS

Short Notice Questions and Answers

SALT PRODUCTION

S.N.Q. No. 14. Shri M. D. Ramasami: Will the Minister of **Production** be pleased to state:

(a) whether it is a fact that uncontrolled over-production of salt by unlicensed producers in Tuticorin area has affected the production of licensed factories, many of which have had to suspend production on account of uneconomic competition and to accumulate large stocks of undisposed of salt;

(b) whether the proposal of Government to introduce from the 1st March, 1955 the system of restricting unlicensed production of salt to two and a half acres has been given up and if so, the reasons therefor;

(c) whether it is a fact that licensed manufacturers are experiencing difficulties in regard to transport while unlicensed manufacturers are in a better position in this regard; and

(d) the policy of Government in regard to unlicensed production of salt?

The Minister of Production (Shri K. C. Reddy): (a) The increased production of salt by unlicensed producers in Tuticorin area has affected to some extent the production of licensed factories in that area and some licensed factories have had to suspend production, but according to the information available with the Salt Department, there is no accumulation of stocks with the licensed producers.

(b) Yes. The Government reviewed the whole position and came to the conclusion that the modification of 1948 concession by limiting the free production of salt to areas of 2½ acres or less would result in discouraging small producers who had established themselves with great effort. The Government have also decided to exempt from the payment of cess small scale licensed producers as well working in areas upto 10 acres. Encouragement of small scale producers has been the main reason for this decision.

(c) No: on the other hand, the licensed manufacturers are able to send their salt under preferential as well as ordinary traffic while the unlicensed manufacturers are able to send their salt under "ordinary booking" only.

(d) The concessions given to unlicensed producers of salt under the Press Note dated 23rd April, 1948 will remain unchanged.

Shri M. D. Ramasami: Are Government aware that for want of wagon facilities, large stocks of salt have accumulated in the licensed factories, and may I know whether early arrangements would be made for their movement?

Shri K. C. Reddy: That would be looked into.

Shri Thanu Pillai: What is the maximum capacity for an individual with a small family to produce salt? What is the acreage in which they can produce salt?

Shri K. C. Reddy: Ten acres; it is on that basis that 10 acres have been fixed in 1948.

Shri Thanu Pillai. May I know whether it is a fact that these small 10 acre-holders are employing other people and are not producing salt by themselves?

Shri K. C. Reddy: May be, in some cases it is happening.

Shri Mohiuddin: May I know whether the quality of the salt produced by the small producers is not upto the standard of the salt produced in big pans, and is that not coming in the way of introducing higher quality salt in India?

Shri K. C. Reddy: That is happening to some extent. Government are seriously considering the imposing of quality control on all salt produced in the country, whether licensed or unlicensed.

Shri V. Muniswamy: May I know whether it has come to the notice of Government that such difficulties are being experienced in other factories in the Madras State, like Marakkanam in the South Arcot district, and may I know whether Government propose to provide facilities to the factories such as afforestation, etc.?

Shri K. C. Reddy: That is a different question altogether. It does not arise here.

Mr. Deputy-Speaker: It does not arise.

Shri Nanadas: May I know what steps Government have taken to obviate the price differences between the unlicensed manufacture of salt and the licensed manufacture of salt?

Shri K. C. Reddy: That also does not arise.

Shri V. Muniswamy: May I know whether it has come to the notice of Government that the workers in the Tuticorin factory are suffering for want of sweet water?

Shri K. C. Reddy: I should like to have notice.

Shri Barman: May I know whether the producers of salt in this cottage industry sector, that is, below 10 acres, are selling their salt at a lower price and therefore, competition is worrying the bigger factories?

Shri K. C. Reddy: May be, they produce at a lesser cost because they have been exempted from the payment of cess. Naturally, they would be able to sell at a lower price.

Shri Thanu Pillai: May I know whether the small producers have been subjected to examination of the quality of salt?

Shri K. C. Reddy: No.

Shri M. D. Ramasami: May I know whether Government are aware of the fact that the price of salt has gone down miserably in recent months affecting the economy of the licensed producers, and if so, what steps do Government propose to take to stabilise the prices?

Shri K. C. Reddy: I should like to have notice.

Shri V. Muniswamy: May I know whether it is a fact that a memorandum was submitted to the hon. Minister during his visit to Travancore stating that because the salt produced in Tuticorin was being dumped into Travancore, the workers there are suffering a lot, and if so, may I know whether Government have taken any action in this direction because of competition?

Shri K. C. Rddy: Yes. A memorandum was submitted. I beg to submit that these questions do not arise out of the main question.

NORTH EAST FRONTIER AGENCY

S.N.Q. No. 15. Dr. Ram Subhag Singh: Will the **Prime Minister** be pleased to state:

(a) whether it is a fact that a large number of houses and some granaries of a Tribal Village in Noklai in Tuensang Division in the North East Frontier Agency were burnt to ashes on the 21st April, 1955, by the supporters of the Naga National Council;

(b) if so, the number of houses and granaries which have been burnt;

(c) the number of persons who have been rendered homeless and are without any food stock due to this incident;

(d) whether any assistance has been given to the villagers by Government; and

(e) the action taken by Government against the persons involved in this incident.

The Deputy Minister of External Affairs (Shri Anil K. Chanda): (a) to (e). Some misguided elements of the Naga National Council were reported to have threatened the village of Nengnuei in Tuensang Frontier Division if they co-operated with the Government. Despite this threat, the villagers actively co-operated with the Administration and, as a reprisal, some of these mis-guided elements are reported to have set fire to the village burning 60 houses and 25 granaries. The number of persons rendered homeless is 150. There was no casualty or loss of life. Medical and food relief was rushed by air. The Political Officer, the Assistant Political Officer along with an adequate police force of the Assam Rifles, went to the spot immediately to round up the miscreants.

2. The Government have also sent two Companies of the Shillong Brigade for garrison duties only to Tuensang in order to relieve the Assam Rifles for police duties. The more reasonable and saner elements of the Nagas are not in favour of violence and it is only the extreme elements which are resorting to violence. The situation is under control and it is hoped that the wrong-doers will realise their mistake in adopting violent methods and causing damage and injury to innocent people. Firm, prompt and effective action is being taken by the Government against the wrong-doers.

Dr. Ram Subhag Singh: Since when have these misguided elements of the Naga National Council started taking such action or committing such things and may I know whether the saner elements of the Naga National Council are having control over that organisation and whether that organisation has so far denounced this action?

Shri Anil K. Chanda: It is well known that the Naga National Council has always been rather anti-government. It is during the last three or four months that the more violent sections of the Council have taken to methods of violence against the villagers who are co-operating with the Administration. But we have reasons to believe that this section has come to realise the futility of such methods, and their co-operation is increasingly available.

Shri K. P. Tripathi: May I know if it is a fact that recently arms and ammunition have been distributed by members of the Naga National Council to other people?

Shri Anil K. Chanda: Yes, there have been some reports to that effect.

Dr. Ram Subhag Singh: Is it true that the Naga National Council or at least these misguided elements of that organisation get financial and other assistance from foreign elements?

Shri Anil K. Chanda: No, we do not have any information.

Shri M. L. Dwivedi: Government were making some inquiries into the work of the foreign missionaries in India. May I know whether Government have been able to find out whether they are connected with these activities.

Shri Anil K. Chanda: No, there are no foreign missionaries in the Tuensang area. There are some Christian missions working there; but they are all manned by local people.

Shri Joachim Alva: In view of the co-operation of the villagers and on account of the impatience of some people awaiting the recommendations of the States Reorganisation Commission, are Government prepared to consider favourably the grant of substantial sums of money for development, public health and educational facilities in that area?

Shri Anil K. Chanda: We have made ample financial provision for the development of these areas. During the budget discussions, all these figures were available.

Shri H. V. Kamath: What steps, political or otherwise, have been, or are being, taken by Government to wean the Naga Council from its demand for independence?

Shri Anil K. Chanda: The Naga Council people operate in the areas which are administered by the Assam Government.

Shri H. V. Kamath: My question was different. What steps have been taken by Government to wean the Naga Council from its demand for independence?

Mr. Deputy-Speaker: If no steps are taken, say 'No', otherwise, say 'Yes'.

Shri Anil K. Chanda: So far as the Naga National Council is concerned, its work is concentrated in the areas which are administered by the Government of Assam, and that Government is taking all adequate steps to counteract the propaganda of the Naga National Council.

Shri H. V. Kamath: What adequate steps?

Shri K. P. Tripathi: Is it a fact that recently the Governor of Assam visited the Naga hills and a group of about 4000 people received him, and thereafter these disturbances started?

Shri Anil K. Chanda: Yes, the Governor was very enthusiastically received in these areas, and it is possibly as a result of this that these people are made to suffer by the violent section of the Naga National Council.

Shri K. P. Tripathi: May I know if it is a fact that after this demonstration of loyalty to the Governor, the fanatical elements in the Naga hills now begin to realise that their strength is waning and therefore, they are taking to intimidation for the purpose of their movement?

Shri Anil K. Chanda: Yes, that is true.

WRITTEN ANSWERS TO QUESTIONS

Short Notice Question and Answer

SECOND FIVE YEAR PLAN

S.N.Q. No. 16. Shri S. N. Das: Will the Minister of **Planning** be pleased to state:

(a) whether it will be possible for Government to put forward any outlines of the Second Five Year Plan before the House, during the current Session;

(b) if not, when it will be possible to do so;

(c) whether the question of inviting the opinions of Members of Parliament on the subject has been considered; and

(d) if so, what procedure is to be followed in this respect?

The Minister of Planning and Irrigation and Power (Shri Nanda): (a) No, Sir.

(b) The draft outline of the Second Five Year Plan is expected to be ready by October-November, 1955, after discussions have taken place with State Governments and Central Ministries regarding their respective plans and it will be placed before Parliament.

(c) Yes, Sir.

(d) The Planning Commission proposes to have meetings with the Informal Consultative Committee of Members of the Parliament.

Vol. IV
05th May, 1955 (Thursday)

LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

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CONTENTS Date...................

COLUMNS

No. 46—FRIDAY, 22ND APRIL, 1955—

Papers laid on the Table—

The Madras Entertainments Tax (Andhra Amendment) Act, 1955 . . . 5977

The Andhra Requisitioning of Buildings (Amendment) Act, 1955 . . . 5977

The Andhra Cinemas (Regulation) Act, 1955 . . . 5977

Amendments to Indian Aircraft Rules, 1937, with an Explanatory Note . 5978

Amendment to Tea Rules, 1954 . . . 5978

Amendment to Estate Duty Rules, 1953 . . . 5978

Declarations of Exemption under Registration of Foreigners Act, 1939 . . 5978—80

Replies to memoranda of Members *re* Demands for Grants, 1955-56—Railways . 5979

Message from Rajya Sabha . . . 5979

Committee on Private Member's Bills and Resolutions—

Twenty-seventh Report —Presented . . . 5979

Calling Attention to matter of Urgent Public Importance—

Strike by army workshop men at Kirkee . . . 5980—83

Business of the House . . . 5983

Finance Bill—

Schedules and Clause 1 . . . 5983—600

Motion to pass, as amended—Adopted . . . 6005—39

Commanders-in-Chief (Change in Designation) Bill—

Motion to consider—Adopted . . . 6040—44

Clauses 1 to 3 and Schedule . . . 6044

Passed . . . 6044

State Bank of India Bill—

Motion to consider—Not concluded. . . . 6045—46

Committee on Private Member's Bills and Resolutions—

Twenty-eighth Report—Adopted . . . 6046

Resolution *re* Weights and Measures—Adopted as amended . . . 6046—73

Resolution *re* Central Agricultural Finance Corporation—Not concluded . . 6073—6106

No. 47—SATURDAY, 23RD APRIL, 1955—

State Bank of India Bill—

Motion to consider—Not concluded . . 6107—6241

Business of the House . . . 6241-42

No. 48—MONDAY, 25TH APRIL, 1955—

Motion for Adjournment—

Deportation of certain Satyagrahis by Portuguese Authorities . . . .

President's assent to Bills . . . .

ection to Committees—

ElIndian Central Arecanut Committee . . . .

Estimates Committee . . . .

Public Accounts Committee . . . .

Motion *re* Association of Members of Rajya Sabha with Public Accounts Committee—

Adopted . . . .

All India Khadi and Village Industries Commission Bill—Introduced . . .

COL.

State Bank of India Bill—
Motion to consider—Adopted . . . .
Message from Rajya Sabha . . . .

No. 49—TUESDAY, 26TH APRIL, 1955—

Papers laid on the Table—
Notification under Requisitioning and Acquisition of Immovable Property Act . 6401
Report on the First General Elections in India, 1951-52-Volume I (General) . 6401
Notifications under Sea Customs Act . . . . 6401—02

Insurance (Amendment) Bill—
Motion to consider—Adopted . . . . 6402—114
Clauses 1 and 2 6411
Motion to pass—Adopted 6411

Reserve Bank of India (Amendment) Bill—
Motion to consider—Adopted . . . . . . 6411—54
Clauses 1 to 11 . . . . 6454—62
Motion to pass—Adopted 6462

Indian Railways (Amendment) Bill—
Motion to consider—Adopted . . . . 6462—64
Clauses 1 and 2 6464-65
Motion to pass—Adopted 6465

Hindu Marriage Bill—
Motion to consider—Not concluded . . 6465—6536
Message from Rajya Sabha. . . . 6536

No. 50—WEDNESDAY, 27TH APRIL, 1955—

Committee on Private Member's Bills and Resolutions—
Twenty-ninth Report—Presented 6537
Correction of answer to Starred Question No. 2282 6537-38

Untouchability (Offences) Bill—
Motion to consider, as reported by Joint Committee—Adopted . . . 6538—6639
Cleeus2 . . . . 6639—76

No. 51—THURSDAY, 28TH APRIL, 1955—

Papers laid on the Table—
Replies to memoranda from Members regarding Demands for Grants (Railways) for 1955-56 6677
Message from Rajya Sabha 6677
Business of the House 6678-79, 6831-34

Untouchability (Offences) Bill—
Clauses 3 to 17 and The Schedule . . . 6679—6824
Motion to pass, as amended—Adopted . . 6824

Hyderabad Export Duties (Validation) Bill—
Motion to consider—Adopted . . . 6825—30
Clauses 1 and 2 6830
Motion to pass—Adopted . . . 6830

No. 52—FRIDAY, 29TH APRIL, 1955—

Message from Rajya Sabha 6833

COLUMN

niversity Grants Commission Bill—

Time for presentation of Report of Joint Committee extended . . . 6833—34

Business of the House . . . . 683, 686—63

Hindu Marriage Bill, as passed by Rajya Sabha—

Motion to consider—Not concluded . . . . . 6835—56, 6863—690

Committee on Private Member's Bill and Resolutions—

Twenty-eventh and Twenty-Ninth Reports—Adopted . . 6906—07

Indian Adoption of Children Bill—Introduced . . . 6907

Caste Distinctions Removal Bill—

Motion to consider—Negatived . . . . 6908—21

Chartered Accountants (Amendment) Bill—Withdrawn

Motion to consider . . . . 6921—46

Code of Criminal Procedure (Amendment) Bill (*Amendment of Section* 435)—

Motion to consider—Not concluded . . . . 6946—60

NO. 53—SATURDAY, 30TH APRIL, 1955—

Papers laid on the Table—

First Report of the Air-India International Corporation 6961

Ministry of Communications Notification No. S.R.O. 589, dated 12-3-55. . 6961

Committee on Absence of Members from Sittings of the House—

Ninth Report—Presented 6961-62

Estimates Committee—

Minutes—Presented 6962

Statement *re* Asian-African Conference held at Bandung . . 6972—74

State Bank of India Bill—

Clauses 2 to 53 and 1 . . . . 6974—721

Schedules one to four

Motion to pass, as amended—Adopted . . . . . 7218—36

Government Premises (Eviction) Amendment Bill—

Time for presentation of Report of Select Committee—Extended . . 7237—38

NO. 54—MONDAY, 2ND MAY, 1955—

Motion for adjournment—

Labour situation in Kanpur . . 7239—41

Presidents' assent to Bills . . . 7241

Message from Rajya Sabha . . 7242

Papers laid on the Table—

Balance sheets and Audit Reports etc. of Delhi Road Transport Authority, 1953-54. 7242

Revised Estimates, 1954-55 and Budget Estimates, 1955-56 of Delhi State Electricity Board. 7243

Committee on Petitions—

Fifth Report—Presented 7243

Leave of Absence 7243

Calling Attention to matter of Urgent Public Importance—

Use of Hindi in U. P. S. C. Examinations. . . . . 7244—46

Citizenship Bill—introduced 7246

Indian Tariff (Amendment) Bill—Introduced . 7246

Hindu Marriage Bill, as passed by Rajya Sabha—

Motion to consider—Adopted . . . . 7246—7379, 7379—7439

COLUMNS

Companies Bill—
Report of Joint Committee—presented 7379
Business of the House 7439-40

No. 55—TUESDAY, 3RD MAY, 1955—

Papers Laid on the Table—
Public Debt (Compensation Bonds) Rules, 1954 7441
Public Debt (Annuity Certificates) Rules, 1954 7441
Ministry of Finance Notification dated 3-5-55 *re* reductions in import Duties on Cotton textiles . . . .
Committee or Subordinate Legislation—
Third Report—Presented . . . 7441-42
Election to Committees—
Indian Central Arecanut Committee 7442
All India Council for Technical Education 7446-47
Statement *re* Reductions in import duties on cotton textiles from U. K. . . 7442—43
Calling attention to matter of Urgent Public Importance—
Allegations against Working of the Kosi Project. . . . 7443—46
Hindu Marriage Bill—
Consideration of clauses—Not concluded . . . . 7447—765
Clauses 2 to 12 . . . . 7449—765

No. 56—WEDNESDAY, 4TH MAY, 1955—

Motions for adjournment—
Deportation of certain satyagrahis by Portuguese Authorities . 7657—61
Labour situation in Kanpur . . . . 7661—65
Papers laid on the Table—
Review of General Agreement on Tariffs and Trade 7665
Statements showing action taken by Government on assurances etc. . . 7665—67
Annual Report of Commissioner of Scheduled Castes and Scheduled Tribes for period ended 31st December, 1954 7667
Evidence on Companies Bill. 7785
Messages from Rajya Sabha. . . . . 7667—70
Code of Criminal Procedure (Amendment) Bill—
Laid on the Table as returned by Rajya Sabha with amendments . . . 7670
Hindu Marriage Bill, as passed by Rajya Sabha—
Consideration of clauses—Not concluded. . . . . . 7670—7785, 7785—791
Clauses 9 to 12 . . . . 7670—5?3
Clauses 13 to 18 . . . . 7690—7785, 7785—?85
Clauses 19 to 23 . . . . 7833—?65
Clauses 24 to 28 . . . . 7865—?9

No. 57—THURSDAY, 5TH MAY, 1955—

Calling attention to matter of Urgent Public Importance—
Appointment of a Commission on Hindi . . . . . 7911—13
Message from Rajya Sabha—
Committee on Assurances— 7913
Second Report—Presented 7913
Correction of answer to Starred Question No. 2435 . . . 7913
Hindu Marriage Bill—
Consideration of clauses—Concluded . . . . 7913—5
Clauses 24 to 30 and 1 . . . . . . 7913—5
Motion to pass—Adopted . . . . . 7954—

Columns

Hindu Succession Bill—

Motion re Joint Committee—Not concluded . . . . 8006—8110

. 58—SATURDAY, 7TH MAY, 1955—

Papers laid on the Table—

Replies to Memoranda of Members re. Demands for Grants, 1955-56—Railways 8111

Memoranda re. points raised during Budget Debate on Irrigation and Power Projects 8111

Statement re. progress of action taken on irregularities in Hirakud Project . . 8111-12

Correction of answer to Starred Question No. 1750 8112-13

Statement re. Textile Mills in Pondicherry . . . . 8113—15

Calling attention to matter of Urgent Public Importance—

Unemployment in Central Excise Department . . . . . . 8211—17

Representation of the People (Amendment) Bill—Withdrawn . . . . 8117—19

Code of Civil Procedure (Amendment) Bill—Introduced 8112

Indian Coinage (Amendment) Bill—Introduced 8119

Land Customs (Amendment) Bill—Introduced 8120

Business of the House—

Report of Commissioner for Scheduled Castes and Scheduled Tribes . . 8120-21

Hindu Succession Bill—

Motion re. Joint Committee—Not concluded. . . 8121—8279

Death of Shri Chinaria 8279-80

Date 10.12.2013

LOK SABHA

Thursday, 5th *May*, 1955

The Lok Sabha met at Half Past Ten of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(*See Part I*)

10-44 A.M.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

APPOINTMENT OF A COMMISSION ON HINDI

Mr. Deputy-Speaker: There is a motion calling attention to a matter of urgent public importance by Shri S N. Das. He is absent.

Shri M. L. Dwivedi (Mamirpur Distt.): I have got that paper. May I request the hon. Minister of Home Affairs to answer it?

Mr. Deputy-Speaker: The hon. Member may read it out.

Shri M. L. Dwivedi: Under Rule 216, I beg to call the attention of the Minister of Home Affairs to the following matter of urgent public importance and I request that he may make a statement thereon:

"Appointment of a Commission on official language under article 344 of the Constitution."

The Minister of Home Affairs (Pandit G. B. Pant): I am making this statement as desired.

In accordance with article 344 of the Constitution, the Government of India

propose to constitute a Commission on Hindi consisting of a Chairman and other members representing the different languages specified in the Eighth Schedule of the Constitution. A notification appointing the Commission and defining its terms of reference is expected soon to issue. I am glad to be able to tell the House that Shri B. G. Kher has agreed to be the Chairman.

The terms of reference of the Commission are likely to be to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 348 of the Constitution;

(d) the form of numerals to be used for any one or more specified purposes of the Union;

(e) the preparation of a time schedule according to which and the manner in which Hindi may gradually replace English as the official language of the Union and as a language for communication between the Union and State Governments and between one State Government and another.

In making their recommendations, the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons be-

[Pandit G. B. Pant]

longing to the non-Hindi speaking areas in regard to the public services.

It is hoped that the Commission will be able to make their report as soon as possible within a year.

MESSAGE FROM RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of Rajya Sabha:

> "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha, that the Rajya Sabha, at its sitting held on the 4th May, 1955, agreed without any amendment to the State Bank of India Bill, 1955. which was passed by the Lok Sabha at its sitting held on the 30th April, 1955."

COMMITTEE ON ASSURANCES

SECOND REPORT

Shrimati Sucheta Kripalani (New Delhi): I beg to present the Second Report of the Committee on Assurances.

CORRECTION OF ANSWER TO STARRED QUESTION No. 2435

The Minister of Labour (Shri Khandubhai Desai): With your permission, I wish to make a correction to the reply that I gave to starred question No. 2435 asked by Shri Bhagwat Jha Azad on the 20th April, 1955.

The correct answer to part (a) should be 'No' and to parts (b) and (c) "39 casual women workers were retrenched due to reduction in work".

HINDU MARRIAGE BILL—*concld.*

Clauses 24 to 28

Mr. Deputy-Speaker: The House will now proceed with clause by clause consideration of the Bill to amend and codify the law relating to marriage among Hindus as passed by the Rajya Sabha. The hon. Minister was to reply.

The Minister in the Ministry of Law (Shri Pataskar): We are now proceeding with the discussion on clauses...

Shri Veeraswamy (Mayuram-Reserved-Sch. Castes): On a point of information, I want to know when the Report of the Commissioner for Scheduled Castes and Scheduled Tribes which was held over from the last session for discussion in this session. will be discussed.

Mr. Deputy-Speaker: This will be conveyed to the Government. The hon. Member might have asked the hon. the Home Minister.

Shri Pataskar: I started replying yesterday to the several amendments which had been moved to clauses 24 to 28. I think the main objections that could be categorised are with respect to the provision regarding custody of children in clause 26. With respect to that, I would like to point out that there is no question here as to whether the mother is the proper person to have the custody or the father is the proper person. All that is out of place so far as the present provision in clause 26 is concerned. The provision is that if, unfortunately, the father and mother go to court for the purpose of getting divorce, the court may under this Act from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. So the whole matter will be left to be decided by the court, with respect to the interests of the unfortunate children whose parents do not find it congenial to continue in married life and go to a court of law for the purpose of getting a divorce. So, here, we need not enter into the question as to who is the proper person to have the custody of the children. That is entirely a matter to be decided by the court.

With respect to the provision in sub-clause (3) of clause 25, about chastity particularly, I shall read it:

> "If the court is satisfied that the party in whose favour an order has

been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any women outside wedlock, it shall rescind the order"

This is the usual provision in all such proceedings. I realise that in some cases unscrupulous persons may take advantage of this provision for harassing their wives, but all the same I think we should have a general law like this. Though there may occasionally arise cases in which unscrupulous persons might harass their innocent wives in order to deprive them of the alimony, I do not think we should tamper with the provision as it now exists in the clause.

The main point of attack was with respect to the provision in clause 24 about the payment of alimony by the wife to the husband. My reply to that is that in the original Bill which the Government brought forward there was no such provision, and I grant that probably such a provision does not exist in any other law elsewhere, but the point is that we ourselves appointed a Joint Select Committee consisting of Members from this House and the other I was not a member of the Committee. I think the hon. Member who spoke yesterday was a Member of the Select Committee, and he gave his reactions. They have made this new innovation in this law. I would appeal to the hon. Members that when something is done by a Joint Select Committee who are our own representatives, we may criticise it or change it, but nothing would be served by saying that it is monstrous etc. I would humbly advise Members not to get agitated, but at any rate, show consideration, so that your own problem will be solved in a better spirit. After all, you have to come to the House and it does not look well. It is only my advice. There is nothing unparliamentary, but our ultimate object is not achieved by this way, and it is better avoided. This is only a piece of small advice which hon. Members may or may not take.

So far as I am concerned, there are now two courses which we can adopt. Either when we pass this Hindu Code Bill, when we have to put them together, the matter can be gone into in a very gentle manner and looked at from the proper angle of view, and I am sure the Members of Parliament will review it at that time. If that is not possible, I can only say at this stage that I will take steps to see—I will not take it upon myself to do it—I will place it before the House and get the opinion of Parliament itself and see if they could review and revise this thing. But for the present in this atmosphere, I think, it is better to allow it to be left as it is, and I can only give the assurance that...

Shrimati Sucheta Kripalani (New Delhi): What is wrong with the atmosphere? I think the atmosphere is in favour of abolition of this.

Shri Pataskar: I would again urge my hon. sister not to get excited over small things which are not going to cause immediately any harm, and I think by creation of a better spirit and greater goodwill, we can do it more easily without all this heat and passion, and I propose to resort to that course whenever I find that there is a suitable occasion for it. That is the only thing which I can say, because, after all, it is not something which Government have introduced. It is something which the Joint Select Committee of Parliament has done. Therefore, let us deal with it...

Mr. Deputy-Speaker: Is it intendend to act as a deterrent?

Shri Pataskar: I would not go into the merits of it because it appears this is an unusual provision, and naturally on sentimental grounds also it is opposed. Sentiment has its own value, I recognise it. Therefore, I think on some other occasion this could be done. I shall place my view before the House for acceptance, and if they accept it this may be omitted. That is the only thing which I can say, which I think is the right thing to do—not to hold up a measure of this

[Shri Pataskar]

importance which is one of the most important parts of this Code, for some small matter like this.

Pandit Thakur Das Bhargava (Gurgaon): May I submit one word? We can agree to the course suggested by hon. Law Minister, but at the same time he should make it quite clear that it is his responsibility to see that this section is taken away. If he does not take the responsibility and does not give the assurance also, and asks us to pass this at this stage, and then some other Law Minister comes...

Shri Pataskar: My responsibility is, as he will also know as an old Parliamentarian, to place before the House my views. So far as my view is concerned, there is no doubt, and I will...

Mr. Deputy-Speaker: What is the point in having an assurance? The matter is here. Either it is done now or not done. I shall put the amendments to the vote of the House.

Shrimati Renu Chakravartty (Basirhat): My amendment No. 80 may be put separately.

Shri Pataskar: May I again appeal to the hon. Members at least not to press this matter for a division.

Shrimati Sucheta Kripalani: You will not give an assurance, and you ask us to pass it.

Shri Pataskar: I have said in the clearest possible terms that if at time there is a codification, this can be done. Otherwise, I will do it at the proper time. More than that, what assurance can I give?

Pandit Thakur Das Bhargava: I also want to submit that we should not see that the Bill is sent back to the other House. We should pass this Bill. When the assurance has come he will certainly honour it. What is the use of delaying

In page 11—

Mr. Deputy-Speaker: The question is:

In page 11,-

(i) in line 30, *for* "either the wife or the husband, as the case may be," *substitute* "the wife"

(ii) in line 31, *omit* "or his"

(iii) in line 33, *omit* "or the husband"

The motion was negatived.

Mr. Deputy-Speaker: Now, I put amendment Nos. 117, 119, 203, 264 and 359 to the vote of the House.

The question is:

In page 11, *for* clause 24, *substitute*:

"24. *Maintenance* pendente lite *and expenses of proceedings.*—Where in any proceeding under this Act, it appears to the Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceedings, it may, on the application of the wife, order the husband to pay to her the expenses of the poceeding and monthly during the proceeding such sum as having regard to the husband's income it may seem to the court to be reasonable and adequate.

(2) This order shall not be appealable."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11, *for* clause 24, *substitute*:

"24. *Maintenance* pendente lite *and expenses of proceeding.*—Where in any proceeding under this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife order the husband to pay to the wife the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the wife's own income and the income of the husband it may seem to the court to be reasonable."

The motion was negatived.

Mr. Deputy-Speaker: The question is:
In page 11, *for* clause 24, *substitute*:

"24. *Maintenance* pendente lite *and expenses of proceedings.*— Where in any proceedings under this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,—

(i) line 30, *for* "either the wife or the husband" *substitute* "the wife";

(ii) line 30, *omit* "as the case may be";

(iii) *line* 31 *omit* "or his"; and

(iv) line 33, *omit* "or the husband"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

in page 11,—

(i) in line 30, *for* "either the wife or the husband, as the case may be" *substitute* "the wife";

(ii) in line 31, *omit* "or his"; and

(iii) in line 33, *omit* "or the husband".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 25 stand part of the Bill."

The motion was negatived.

Clause 24 was added to the Bill.

Mr. Deputy-Speaker: Clause 25. I shall now put amendment Nos. 120, 81, 166, 204, 361, 362, 167, 205, 82. 363. 83, 364. 206 and 122.

The question is:

In pages 11 and 12, *for* clause 25, *substitute*:

"25. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree for the termination of any marriage or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1) it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,-

(i) in lines 40 and 41, *for* "either the wife or the husband, as the case may be," *substitute* "the wife",

(ii) in line 42, *omit* "or his"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,—

(i) in line 40, *omit* "either";

(ii) in lines 40 and 41, *omit* "or the husband as the case may be"; and

(iii) in line 42, *omit* "or his"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,—

(i) in lines 40 and 41, *for* "either the wife or the husband, as the case may be," *substitute* "the wife", and

[Mr. Deputy-Speaker]

(ii) in line 42, *omit* "or his"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11,—

(i) in lines 40 and 41, *for* "either the wife or the husband, as the case may be," *substitute* "the wife",

(ii) in line 42, *omit* "or his"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 11, line 41, *after* "order" *insert*:

"except in the cases of decrees obtained by taking advantage of the provision contained in Section 13 sub-section (1) (ii)"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12 *for* lines 11 to 15 *substitute*:

"(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, *or* lines 11 to 15, *substitute*:

"(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried, or that she has not remained chaste, it shall rescind the order."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, lines 12 to 15, *omit* or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 12, lines 12 to 15, *omit* "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, lines 12 to 15, *for*, "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock," *substitute*—"or is leading an adulterous life."

The motion was negatived.

Mr. Deputy-Speaker The question is:

In page 12, lines 12 to 15, *for*, "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock," *substitute*—"or is leading an adulterous life".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 12, *after* line 15, add:

"(4) The court may not grant maintenance to a husband unless the husband is a lunatic, an idiot, a leper or a crippled man and is in such a state that he is unable to maintain himself."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In pages 11 and 12, *for* lines 37 to 44 and lines 1 to 10, *substitute*:

"25. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by the wife, order that the husband shall, while the

wife remains unmarried, pay to the wife for her maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the wife as having regard to the husband's own income and other property, if any, the income and other property of the wife and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured if necessary, by a charge on the immovable property of the husband.

(2) If the court is satisfied that there is a change in the circumstances of the wife at any time after it has made an order under sub-section (1), it may, at the instance of the husband, vary, modify or rescind any such order in such manner as the court may deem just."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 25 stand part of the Bill."

The motion was adopted.

Clause 25 *was added to the Bill.*

Mr. Deputy-Speaker: The question is:

In page 12, *after* line 27, *add*:

"Provided that the mother shall have custody of the minor children upto the age of twelve except in cases where it is regarded to be morally harmful for the children to be in her custody or in case the mother is insane"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 26 stand part of the Bill."

The motion was adopted.

Clause 26 *was added to the Bill.*

11 A.M.

Mr. Deputy-Speaker: I shall now put new clause 26A to vote.

The question is:

In page 12, *after* line 27, *add:*

'26A. In such hard cases where the parents of the child or children have no subsistence of maintenance or if they have subsistence of maintenance are careless, Government shall take full charge for imparting adequate education and looking after of the child or children.

It is also advisable for the Government to charge from such parents who are in a position to pay, the costs incurred by the Government for the education and of looking after of their child or children.'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 *was added to the Bill.*

Mr. Deputy-Speaker: The question is:

In page 12, line 40, add at the end:

"and on a decree of compromise under section 22A".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 12, *after* line 40, *add*:

"Provided further that every such appeal shall be instituted within ninety days after the decision appealed from shall have been pronounced, and the appellate court may, in its discretion for sufficient and reasonable cause, excuse delay and shall admit the appeal".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 28 stand part of the Bill."

The motion was adopted.

Clause 28 *was added to the Bill.*

Mr. Deputy-Speaker: I shall now put the amendment seeking to introduce a new clause 28A to vote.

The question is:

In page 12, *after* line 40, *insert:*

"28A. *Rule-making powers.*—The Central Government may by notification in the *Gazette of India* and subject to the condition of previous publication, make rules

[Mr. Deputy-Speaker]

for the purpose of carrying into effect the provisions of this Act."

The motion was negatived.

Mr. Deputy-Speaker: The House will now take up clauses 29 and 30. Chits indicating the amendments which hon. Members want to move to these two clauses may be handed over at the Table as usual.

Shri N.C. Chatterjee (Hooghly): I beg to move:

In page 13, *omit* lines 1 to 4.

If you kindly look at sub-clause (2) of clause 29, you will find that it reads as follows:

"Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.".

I am asking this Parliament to seriously consider whether we should have such a clause as this in the Hindu Marriage Bill. The first principle of codification is uniformity. That is the main object. You want to have a code or to have a law which will be the same uniform law for all people who are Hindus. In fact you really ought to have passed a law for all citizens. But if you do not do that, and you have only a Hindu marriage Bill, make it a really Hindu marriage Bill.

My hon. friend Shri Pataskar has already said that more than three-fourths of the people are governed by custom. Now, they have got a variety of customs, diversity of customs; some customs are very loose, and some other are of a very unsatisfactory character. I would not use any strong language. But I would only say this that the Indo-Aryan civilisation in its march of progress had absorbed people at different levels of culture, and therefore they had allowed a certain amount of latitude. But now when you are making a law, for heaven's sake make it uniform. Otherwise what is the good of making a law? What is the point in making a law?

The hon. Minister had said that this is the first instalment of the Hindu Code. The first instalment of the Hindu Code was that there shall be one uniform system of legislation for all Hindus, from Kashmir to Cape Comorin, from Amarnath to Rameswaram; and one can have some sympathy and some respect for that ideal, namely, that you are having one uniform system of legislation, which shall govern millions and crores of people who call themselves Hindus. Your law, if you have any faith in it, must be a social reality; it should not be kept in such a way as to destroy the basic principle of uniformity. The first thing is stability and uniformity. Secondly, there should be security from diversity and security from possible disorder.

Now when you are passing a Hindu Marriage Bill, and you are making a provision for divorce in that, you have taken care to appoint a Joint Committee, which has gone into this provision for days; then we have discussed this matter on the floor of the House for hours, and then we have framed a particular provision. 750 Members of Parliament, out of whom about 500 are elected by adult franchise, have in their wisdom enacted special standards, special conditions, and special circumstances under which dissolution of marriage can take place. But at the same time, you are destroying that very Bill and that very code by saying that in spite of all that, custom shall continue to be in force. This is really repugnant to the very idea of codification. The real danger of this kind of a legislation is its inhibitive effect on the development of human relations. If you really have faith that this kind of social legislation is good for the nation, good for the community, good for rescuing the so-called oppressed women and tortured women from their very unsatisfactory state of affairs, then make that law universal at least in the Hindu community. Do not discriminate.

You know perfectly well, as my hon. friend Pandit Thakur Das Bhargava has already pointed out, there are certain very loose customs which are nothing but sanction for promiscuous intercourse, or *muta* marriage or even things worse than that; there are customs which almost sanction polyandry and polygamy of the crudest type. Would you like to continue those things?

If you allow all these customs, then I am saying that you are really making a mockery of this Hindu Marriage Bill. You are destroying the very objective of this Bill, and you are to a large extent making it infructuous, if you do not have uniformity, if you allow this kind of diversity of customs to continue from one part of the country to the other. You should build up on certain moral standards. You should have faith in those moral standards, if you really believe them to be just, fair and equitable. If you really think that this is a thing that should be imposed as a moral obligation and the entire society should act upon it, then do not keep your Harijan brothers and Harijan sisters always as untouchables. They have had their own systems and their own customs. If you think that your legislation is inspired by a higher ideal, then try to uplift them to that ideal; try to bring them up to that higher standard; do not allow them to remain always as untouchables, always as Harijans.

I think there was considerable force in Dr. Ambedkar's suggestion when he pointed out that this kind of a thing should not be allowed. Either have a Hindu Code, or do not have a Hindu Code. That is how Dr. Ambedkar forcefully argued his case. He is the biggest representative of the Scheduled Castes and our Harijan borthers and sisters. He said, do not make a mockery of it, do not make a tomfoolery of it, have a Hindu Code for all Hindus, do not allow discrimination between caste Hindus and non-caste-Hindus, between upper class Hindus and Harijan brothers and sisters. He said that there would be no point in having a Hindu Code, if there was going to be diversity of customs. I think there is a good deal of force in what Dr. Ambedkar said at that time.

You are now really departing from Dr. Ambedkar's stand, and the stand that you are taking is not a good one. You should act in such a way that the maxims or principles of your legislation can be made the means of achieving the general good of the entire nation and the entire community. But you are not acting up to those maxims, which should be the cardinal principle of a social legislation.

You are saying here that this shall apply to all Hindus, including Sikhs, Jains, Vaishnavites, Arya Samajists, Brahmo Samajists, and so on, because you look upon them all as integral sections of one Hindu community, as part and parcel of one Hindu community. Having made that bold declaration and having made that bold provision in this Bill, stick to it; do not allow this law to be made abortive. I hope the hon. Minister will appreciate what I am saying. You can always have your family customs; and even higher caste Hindus can evolve their own family customs and say that they have those customs. And, with a little amount of friendly evidence you can also prove these customs. If that be so, then for whom are you legislating? For whom are you making this law? Why make this law abortive? Why make this illusory? Why make this a night-mare? Why allow this kind of abrogation of law by side-wind? My friend Acharya Kripalani says that they are doing it for satisfying some fashionable women. I do not think that Shri Pataskar is inspired by that ideal. I know fashionable ladies do rule Delhi and also rule, to a large extent, the Treasury Benches. But I still feel that Shri Pataskar is inspired by a little higher ideal than that. If Shri C. C. Biswas and Shri Pataskar are really inspired—not dominated by fashionable ladies—by real good maxims, then those maxims......

The Minister of Law and Minority Affairs (Shri Biswas): Do you mean it as a compliment?

Shri N. C. Chatterjee: I do not say anything with regard to the Law Minister who is a widower.

Pandit Thakur Das Bhargava (Gurgaon): Then about the married Law Minister you want to say this?

Shri N. C. Chatterjee: Yes, if Shri Pataskar is really inspired by some principle, by some ideal, if he honestly believes that he is doing something which is really good for men and women, then I appeal to him not to make this law farcical, not to make this few abortive, not to make this law really in tructuous for the big of the Hindu community. You make it uniform, you make it consistent, make it logical, make it applicable to all sections and classes and try to educate, to lift up our so-called backward classes and our so-called backward brothers and sisters to a higher level, tc a more decent and nobler standard of life which is being embodied, according to you, in this Bill.

Mr. Deputy-Speaker: Amendment moved:

In page 13, *omit* lines 1 to 4.

Shri Damodara Menon (Kozhikode): Sir, I oppose the amendment proposed by my hon. friend Shri N. C. Chatterjee. I am all for uniformity in a social legislation of this nature. But, when we are taking of uniformity, uniformity must show some kind of progress and it should not really draw the sections of Hindu society which are more progressive than orthodox sections, to the level of those unimaginative orthodox sections of society. For the sake of equality and uniformity progress cannot be ruined.

Acharya Kripalani (Bhagalpur-cum Purnea): Progress is not ruined; it is sitting in the bride's house.

Shri Damodara Menon: I want to draw the attention of the House to the fact that this clause deals only with certain customary rights regarding annulment of marriage and dissolution of marriage. It does not affect any other section of the Bill. Now, there are certain sections of the Hindu society which enjoy today rights of dissolution which are far more progressive than those which have now been adopted in the Bill. I want particularly to refer to the Marumakkathayam system of divorce. If this amendment is accepted it will not be possible for the people belonging to the Marumakkathayam system of law to dissolve their marriage in the manner in which they are doing today.

We people who enjoy Marumakkathayam system of law do not believe in going to a court of law and washing all the dirty linen before the public to get a divorce.

Acharya Kripalani: It is better to wash it than not to wash it.

Shri Damodara Menon: I do not agree with my leader Acharya Kripalani in this matter. I personally think, if, especially in matters concerning household affairs, we avoid washing our dirty linen in public, social morals will be improved and human dignity will also improve. Therefore, I do not want that people of the Marumakkathayam system of law to be dragged down to the level of other sections of Hindu community who want now to go to a court of law and get their marriage dissolved by alleging all kind of things including adultery against either of the party.

I was referring to the Marumakkathayam system of law. In that system, if either the husband or the wife feels that he or she is not satisfied with the marriage or there is some kind of dissatisfaction in continuing the marriage tie, unilaterally either of them can petition the court and there is no trial whatsoever. After six months divorce is granted automatically.

Now, you will say that when divorce is so easy, there is no safety for marriage and there will be a large number of divorces. Our own experience is, for the last several centuries, when divorce is so easy, there is no kind of mutual quarrel and there is no necessity for going to a court of law to prove dirty things. Marriages are far more stable. I consider that, in due course, the rest of the Hindu society will march to the progressive state in which we are today and instead of drawing us to the level of other orthodox sections, I would request the House

not to accept the amendment, but to retain at least in some sections of Hindu society the sober and progressive systems of dissolution of marriage. Therefore, Sir, I oppose this amendment vehemently.

Shri Sinhasan Singh (Goarkhpur Distt.—South): Sir, the learned and educated lawyer argues every case, whether weak or strong, from his own point of view. Shri N. C. Chatterjee is a very good lawyer and can make a very strong case look a very weak case and a very weak case look a very strong case. So far he has been arguing that all customary laws in Hindu society are good laws and they are being removed by this Act. But when you are providing certain customary laws, when you are retaining some customary laws, he is arguing that this is monstrous because he feels that all customs that have been now removed by law should not be allowed to remain anywhere. Clause 29 is only a saving clause for those classes of people who have been getting their marriages dissolved or divorce effected among themselves without any recourse to law. If that clause is taken away then many of the poorer classes will have the necessity of going to law courts in spite of the fact that they do not want to take recourse to law courts. If this clause is removed then they will be forced to go to courts and pay the lawyers.

Acharya Kripalani: Others will be obliged to go to law courts.

Shri Sinhasan Singh: If that is the argument, as he argued today, that this law was giving a brief to the lawyers, if that is the point here also, to make everybody go to the law courts, then I have no quarrel with him, as he is making out a case.

But, I submit, if this clause is allowed to remain, then it will benefit a larger section of people and will not force them to go to law courts.

Now, look at clause 23, sub-clause (c). It says:

"the petition is not presented or prosecuted in collusion with the respondent, and"

This clause is a great bar to getting a decree through compromise. Now, that clause being there, even the willing party, for some reasons best known to them—under customs they can have divorce—they will go to law courts and fight the case. They will put false evidence and show that they are really fighting out a case.

Therefore, if this could be allowed, I request my hon. friend not to press his amendment. I would request him not to make a good case look like a bad case and argue out a bad case to look like a good one. This is a good case made out for that class of people who have been so far enjoying a beneficial clause among themselves which we are now giving to them. Only a few classes of higher society were deprived of the right of divorce. Others were enoying it and they will have the right to go to law courts according to this Bill. Besides that, this will be an extra privilege which they may avail of.

Therefore, I submit that this should be allowed to remain as it is and my hon. friend should withdraw his amendment or else the amendment should be thrown out by the House.

Shri Nand Lal Sharma (Sikar): I beg to move:

In page 12, *omit*, lines 42 to 47.

Shri K. L. More (Kolhapur *cum* Satara—Reserved—Sch. Castes): I beg to move.

In page 13, line 2, *omit* "recognised by custom or".

Shri Nand Lal Sharma: I beg to move:

In page 13, line 2, omit "recognised by any special enactment".

Shri Jangde: (Bilaspur—Reserved—Sch. Castes): I beg to move:

In page 13, lines 3 and 4, *for* "whether solemnized before or after the commencement of this Act" *substitute*:

"solemnized before the commencement of this Act."

Shri Nand Lal Sharma: I beg to move:

In page 13,—

(i) in line 3, *omit* "whether"

(ii) in line 4, *omit* "before or"

Shri V. G. Deshpande (Guna): I beg to move:

In page 13, *after* line 4, *add*:

"Provided that it would be lawful for either party to the marriage dissolved according to custom or usage to move the Court under sections 24, 25, 26 and 27 of this Act for necessary orders."

Shri Nand Lal Sharma: I beg to move:

In page 13, *for* lines 11 to 14 *substitute*:

"The provisions of the Special Marriage Act 1954 shall cease to have any effect on the Hindus after the commencement of this Act".

Mr. Deputy-Speaker: All these amendments are now before the House.

Pandit Thakur Das Bhargava: I wish to speak on my two amendments No. 266 and 267. It would appear that the second amendment seeks to bring about that the provisions of the Special Marriage Act may not remain applicable to marriages according to this Act. When we enacted the Special Marriage Act, it was said "we do not know whether the provisions relating to divorce will be enacted under the Hindu Marriage Bill or not". But now that we have passed this provision, it is quite clear that the provisions of divorce will be avilable to such persons as may want to use them so far as Hindu marriages are concerned. Then where is the occasion for keeping them in the Special Marriage Act? This is making another distinction between Hindus and Hindus. How many classes do you want to create? The first class of Hindus will be governed by clause 13; the second class by clause 29. And there will be a third class of Hindus whose marriages will be registered under the Special Marriage Act, and a fourth class of Hindus who will have their marriages under the Special Marriage Act. So there are four provisions of law and four classes of Hindus who will be governed by different provisions of the divorce law.

Shri C. R. Narasimhan (Krishnagiri): What is the harm in that?

Pandit Thakur Das Bhargava: What was the harm when we had our own laws and customs before? Why do you want this codification? I want a straight answer. It is not the first time that I am submitting it. For a few years the Hindu Code Bill was before the House and some of the provisions were discussed for hours together. I have not quoted them, because the time is very strictly limited for every Member. Otherwise I would have shown that this was an agreed principle, that so far as codification was concerned its justification consisted in doing away with these customs. Otherwise there is no sense in having this codification.

Yesterday I read out from the proposed Hindu Code Bill of Dr. Ambedkar and I submitted that in regard to the matter of divorce he had propounded a rule which was contained in clause 30. This is what he said:

"Notwithstanding anything contained in this Part, no marriage solemnized, whether before or after the commencement of this Code, shall be deemed to have been lawfully annulled except by a decree of a competent court passed in that behalf". I can understand any person arguing that poorer classes of people should not be forced to go to district courts or to engage lawyers, or spend money.

Acharya Kripalani: As if the higher castes are not poor, or what?

Pandit Thakur Das Bhargava: They are also poor. That is another argument. And provision can be made for having *panchayat* or *mufassal* courts. Make access easy to the courts. But to say that without the authority of

courts you can get your marriages annulled, is too much. I cannot possibly agree to it. And, as Acharya Kripalani has been pleased to point out, why do you differentiate between lower castes and higher castes? Yesterday Shri Jagjivan Ram was saying it is not only in the lower castes, that such custom prevails. Many castes among Hindus have got this custom, very respectable castes and higher castes.

For the purpose of having a uniform law we are bringing this divorce law for all the classes in the country. If you make a differentiation in regard to divorce, I want to know in relation to what other matters you will not recognise custom and with what justification. For instance, I will take the question of inheritance, adoption. When we are enacting this rule of elimination of custom. I put in an amendment saying that so far as the Punjab is concerned it should be exempted from this rule, because the Punjab was governed mainly by custom. Under section 10 of Act 1 of 1872 (Punjab Laws Act) custom was the first rule of decision in regard to divorce, inheritance. etc. All that, we are giving up, because we want a uniform law for the whole of India. Otherwise, in respect of every marriage, including adoption and inheritance, we have our own customs in the Punjab which were applicable to all the people, to Hindus, Sikhs and Muslims. We are giving them up for the sake of uniformity. After we have made this sacrifice do you want to suggest that in every possible matter all other parts of India will have nothing but their full customs? In regard to marriages, I saw that in a previous section *viz.*, section 5 they allowed this custom to rule so far as South India is concerned or other parts even in North India, and marriages, which are not good by Hindu law are to be treated as good, though crores of people regard such connection or marriage as incestuous. If every person is to have his own custom and every marriage can be annulled otherwise than through court. I do not know where we stand. I take very strong exception to this.

On the contrary, I have proposed an amendment in which I say that even the provisions of the Special Marriage Act should be taken away in regard to marriages between Hindus solemnized before or after the commencement of this Act. I want that this Bill relating to Hindus should be a complete one. I feel it humiliating that a Hindu marriage performed under this Act should be registered under the Special Marriage Act. For a Hindu gentleman who wants to cease his connection with his joint family, he has to take shelter under the registration provisions of the Special Marriage Law and thereby attract the provisions of the Succession Act which is nothing but Christian law.

Acharya Kripalani: Only Protestants.

Pandit Thakur Das Bhargava: May be so. It means for those who will have divorce under the Special Marriage law, their inheritance will also be quite different.

So far as this law is concerned, my own difficulty is that if you allow this marriage law to be made and custom effectuated therein when the question of succession Act comes, we will all want that our customs regarding succession may be respected, and the Law Minister will not be able to say then that he does not accept these customs without being charged with partiality for a certain class. The result will be the attempt of having one uniform code for the whole of India will fail. And I will be very sorry if it fails. It is, after all ,the uniformity of law that we are anxious to bring about in this country: one law, one ideal which will bind the people. If we do not want it and if we are going to have different laws for different people, why are you wasting the time of this House and our time by bringing a measure which is quite wrong according to the principles which were propounded in this House by the Government itself? What is the use of having this law, I repeat, and I have said it many times.

Now, there is another difficulty. In this clause the words are "Nothing

* [Pandit Thakur Das Bhargava]

contained in this Act shall be deemed to affect any right recognised by custom etc." Not only the question is whether "A" will go to court or "B" will not go to court. It means that so far as the grounds of divorce are concerned they will also be different. Everything relating to divorce—why only divorce—relating to annulment of marriage, relating to voidability or being void, will be different. I want to know why the other incidents of marriage shall not be different. And every person shall have his own way. Shri Damodara Menon told us that they are progressive people and they can get their marriage dissolved by unilateral determination of either of the parties and that all of us should march towards them. I can understand this also that according to his views this is so. Then he ought to have made an attempt to see that the provisions relating to divorce were made progressive.

I myself see that the provisions about divorce are not so proper as to inspire confidence. For instance, in the case of desertion you have to get a judicial separation first etc. my sister Shrimati Renu Chakravartty yesterday drew attention to this, and I feel as a matter of fact that these provisions are not progressive enough. Attempts should be made to change them and not to say that we do not want to change them and we want to go our own way. I can understand this idea that Mr. Venkataraman wants that we should adopt the customs of Malabar. Let him lead us to that millennium by changing the law and we will follow. But he should not ask us to run away or to himself run away. Let us have one uniform law. Whatever be the customs, let us have one uniform law for the whole of India. We are one with him in that respect. But if you want to have different laws for each and every person, I can never agree to this. According to me the entire grounds in favour of this Bill or in the other Bill disappear and pass into oblivion if you adopt the present course. I cannot be a party to the codification if the codification divides tribe from tribe caste from caste, one regional section from the other regional section, those who believe in divorce and those who do not believe in divorce and those who have a third kind of divorce. This is putting a wedge among ourselves, and I should say it is a denationalising law. I cannot agree to it.

Shri Venkataraman (Tanjore): We have now heard the same arguments which were advanced with regard to an amendment to clause 5 of the Bill, namely, that customs should not be recognised. Let us forget everything about all the bad and good, hideous, progressive, regressive and reactionary customs, and ask ourselves, as practical men, a question: if by enacting a law, hundreds of thousands of people are going to be made liable for offence of bigamy, then would you bring about that law without consideration for all the ancient customs which they have been following?

Pandit Thakur Das Bhargava: Why are you then merely wounding the susceptibilities of those who do not believe in divorce?

Shri N. C. Chatterjee: He takes a malicious pleasure in it.

Shri Venkataraman: I will answer that question. I am not so malicious as Shri Chatterjee wants others to believe. My argument is that in all cases where there is a custom which has been recognised as valid, as not opposed to public policy, as not opposed to morals, why should the House interfere with such custom and make a divorce, got in pursuance of that custom, an offence under the Indian Penal Code? The effect of deletion of sub-section (2) of section 29 would be that those who practise the present customary divorces will not be able to do so, and if in ignorance of the passage of this law, they do it, they would become liable for punishment under bigamy, a very serious offence.

Acharya Kripalani: Why should they be ignorant? You have got a very enlightened electorate; you have educated it properly. Why should they be ignorant?

Shri Venkataraman: If we had an enlightened electorate, and if we had all our people as intelligent and as I well-informed and educated as Acharya Kripalani, I will be first man to vote for the deletion of sub-section(2) of section 29. But recognising the existing conditions as we do, recognising the state of education and knowledge in this country, and recognising also the persistence of ancient customs with us and the habits which persist even in Pandit Thakur Das ji and Shri Chatterjee, I ask: why should you now say that they have become overnight so educated and so well-informed?

Pandit Thakur Das Bhargava: The hilly people of Himachal Pradesh, who practise bigamy, are you think much more intelligent and much more advanced than the people in the south.

Shri Venkataraman: It is a matter of opinion as to who is intelligent and who is not. What I am trying to show is that in this country we are not yet ripe for a sort of legislation as is contemplated by Pandit Thakur Das Bhargava. Thakur Das ji would say that every divorce should go to court notwithstanding the fact that they have been recognised by custom, by judicial interpretation, etc. It is not every custom and it is not every freak or every odd act that will be recognised as a custom. In fact, custom, in order to be recognised, must be ancident, must be certain, must be uninterrupted and must not be opposed to public policy and morals. It is only then that customs would be recognised. It is not as if every individual custom or every freakish act that people practise should be recognised as custom. There are a number of cases in which the customs have been held to be valid as well as not valid. For instance, a custom permitting a Hindu husband to dissolve the marriage without the consent of the other party on payment of a sum of money to be fixed by the caste is not held to be vaild. So also a custom allowing a woman to re-marry during her first husband's lifetime without any defined rules by which the marriage of the first husband is dissolved has been held to be invalid. Therefore, it is not every custom that people practise that will be recognised by the courts, and what determines whether a custom is valid or not is, as I said defined and already laid down. The condition today is such that if you abrogate the savings in favour of the custom, the large body of people who follow customary practice would become criminals, and would become punishable with a sentence running over to seven years' imprisonment. This is not what we contemplate.

There are enactments provided for different kinds of divorces. Take for instance the Marumakkattayam Act, which has been passed by the Madras Legislature. That Act provides that divorce can be had in other forms than what we contemplate under the Marriage Act before us. Why should this House abrogate that particular law which has been passed by a Legislature and which, according to the notions of the people, has been found to be a vaild thing? If you annul sub-section (2) of section 29, it will make those divorces also invalid.

Pandit Thakur Das Bhargava: Keep up such laws under this act.

Shri Venkataraman: If you are going to make an exception in favour of the Marumakkattayam Act, why cannot you make an exception in favour of customs? Why should you not recognise other customs which may also be excepted?

Pandit Thakur Das Bhargava: Why do you not recognise the custom in regard to all other matters?

Shri Venkataraman: My time is up and, therefore, I shall confine myself to these two or three remarks.

Then, there is the question of heavy penalty attached to persons marrying in contravention of the monogamy rule. It is not as if the person will be fined or will be let off or it will not have serious consequences. The consequences of the removal of section 29 (2) would be so serious on the people that you have to consider it more deeply. This uniformity is a thing which is bandied about both by Shri Chatterjee and Pandit Thakur Das Bhargava. The persons who marry

[Shri Venkataraman.]

under the Special Marrige Act opt for different things. They opt out of the Hindu law of succession and they opt for a special rule of succession. They are not the same class of people, as Pandit Thakur Das Bhargava wants us to believe, as the other Hindus governed by the Hindu Law. There is nothing wrong and there is nothing so shockingly immoral in different classes of persons opting for different rules of succession. Take your own Hindu Law. A person who acquires property can make a will in the way in which he wants and he will not be governed by intestacy. Like that, the person, under the Special Marriage Act, opts for a certain different law of succession, different law of marriage and divorce and he cannot be considered or taken to belong to the same class of people as a Hindu who marriages under the Hindu Law. Therefore, I say that the suggestion made by Shri Chatterjee and Pandit Thakur Das Bhargava that section 29(2) should be deleted will be fraught with very serious consequences and will lead to a very large number of offences, which was not the intention or contemplation of the measure. I strongly oppose the amendment.

Shri Sadhan Gupta: I also join my predecessors in very strongly opposing the amendment of Shri Chatterjee. While presenting the amendment, Shri Chatterjee as well as Pandit Thakur Das Bhargava waxed eloquent about the damage that we are doing by excepting all sorts of customs. Shri Chatterjee said that we should not permit a certain level of society which is low to remain there and we should drag them up. Pandit Thakur Das Bhargava said that if we accepted this kind of a clause, how could we except them in the case of inheritance and succession? I would try to answer both these arguments. In the first place, the argument of Shri Chatterjee springs from a complete misunderstanding of the scope of the clause 29 (2). It does not relate to anything other than mere dissolution of marriage. Questions like bigamy or monogamy, polyandry or mono-andry are not covered by this particular clause, and incidentally we have made provisions in the Bill to penalise bigamy or polyandry. What we seek to do here is that we recognise the custom of divorce which is prevalent in certain communities—and for a very good reason. We have taken the first steps to introduce divorce in a society where divorce did not previously exist. We recognise that divorce is necessary because otherwise it will lead to very serious consequences in many a married life. We introduce divorce because of these merits. It happens that already in a vast section of Hindu society we have very progressive divorce laws recognised by custom and very progressive usages which recognise divorce. Our friend, Shri Damodara Menon had already pointed out that in his part of the country divorce is much easier and that kind of easy divorce has rather lead to cleansing of married life than smirching it with filth. That is something to be thought of. Unfortunately, although we would have very much wished that divorce laws should have been made clean, yet we have not been able to persuade the House to accept that position. Therefore, it is but proper that on their own merits we should allow those divorce customs to exist and to prevail in the section where it prevails. In the name of unity, it is not proper that we should perpetrate oppression and make their customs into our reactionary law. Therefore, I see no justification for omitting clause 2. It is a very salutary provision. Pandit Thakur Das Bhargava has argued: how can we accept those customs which are contrary to our conception of inheritance? For very good reasons. We exempt them on their own merits. You say: 'we will abolish any custom which is immoral. But we shall not for the sake of unity perpetrate oppression on any section of the population. Similarly, if there is a custom of inheritance which is more progressive then what we seek to introduce, we will certainly uphold it but when it is reactionary, we will abolish it.

Pandit Thakur Das Bhargava: Let the hon. Law Minister first judge whether it is reactionary.

Shri Sadhan Gupta: We shall judge; we always judge.

Now, the conclusion inevitably is this. Seeking to delete clause 29(2) springs really consciously or unconsciously from the cultural imperialism of the sanatani spirit and this House should have nothing to do with it.

श्री जांगड़े : उपाध्यक्ष महोदय, मैं जब यह कहता हूं कि धारा २६ (२) को हटा दिया जाय तो बहुत से लोग मुझे गलत समझेंगे और कहेंगे कि मैं प्रतिक्रियावाद की ओर जा रहा हूं, पर मैं यह जानना चाहता हूं कि इस सदन की प्रगति या प्रगतिवाद या प्रगतिशीलता की परिभाषा क्या है ? क्या लूज़ डाइवोर्स या ढीले विवाह विच्छेद की इजाजत देना क्या प्रगति की ओर जाना होता है ? मुझे मालूम है, गत दस वर्षों से मैं समाज में सुधार करता चला आ रहा हूं और जब भी मैं अपने निर्वाचन क्षेत्र में जाता हूं तो ऐसे ही मामले मेरे पास दस, बीस रोज आते हैं और मुझे यह देख कर बड़ी परेशानी होती है कि उन ग़रीब आदमियों की पुकार को समाज सुनने को तैयार नहीं, अदालत सुनने को तैयार नहीं तो उस आदमी का कौन भला कर सकेगा और जब मैं इस बात को सोचता हूं तो मुझे बड़ी परेशानी होती है और समाज भी परेशान होता है । आखिर आपने धारा १३ में जो डाइवोर्स से सम्बन्ध रखती है और उसमें जो आपने शर्तें लगाई हैं कि उन उन हालतों में सम्बन्ध विच्छेद हो सकता है, मैं पूछना चाहता हूं कि उन शर्तों को आप कस्टमरी डाइवोर्स में क्या नहीं लगा सकते । वे क्या क्या शर्तें हैं जिन शर्तों के आधार पर पत्नी पति को या पति पत्नी को छोड़ दे ? ऐसी शर्तें क्या हैं उनको मैं इस सदन और माननीय मंत्री महोदय से जानना चाहता हूं । क्या यह बात नहीं की जा सकती कि कस्टमरी डाइवोर्स

या विवाह विघेदक तलाक की जो शर्तें हैं उन शर्तों को देख कर एक कौमन शर्त बना कर यहां पर उन को इनक्लूड नहीं किया जा सकता? हमारे मंत्री महोदय यह तो जानने की कोशिश करेंगे नहीं कि कस्टमरी डाइवोर्स की शर्तें क्या हैं, खाली यहां सदन में बैठ कर क़ानून बना देंगे और यह देखने की कोशिश नहीं करेंगे कि इसका असर उन लोगों पर क्या होता है और क्या नहीं होता है, इस की तरफ़ ध्यान नहीं है ।

हमारे यहां और देश के कई भागों में एक मर्द के रहते औरत दूसरा पति बना लेती है अब आप ही बतलाये वह बेचारा आदमी शादी पर दो चार हजार रुपये खर्च कर डालता है और उसकी बीवी कुछ दिन बाद दूसरा घर कर लेती है और वह बेचारा परेशान इधर उधर घूमता है और फ़रियाद करता है लेकिन कुछ नहीं बन पाता, समाज कुछ नहीं कर पाता और अदालत भी कुछ नहीं कर पाती सिवाय इसके कि दोनों को राजीनामा करने के लिए सलाह दी जाती है । आखिर इस राजीनामे का क्या अर्थ है ? मेरे नज़दीक तो वह समाज की असमर्थता और कमजोरी को ही प्रकट करता है और यह समाज की वीकनेस का ज्वलंत उदाहरण है । वह कम्प्रोमाइज़ नहीं है, वह तो विवशता है, लाचारी है और लाचारी की कम्प्रोमाइज़ को हम असली कम्प्रोमाइज़ नहीं कह सकते । आज के दिन मैं समझता हूं कि इस लूज़ डाइवोर्स के कारण लोगों को काफी मुसीबत और परेशानी भुगतनी पड़ रही है । यह ठीक है कि आदिमजातियों और आदिवासियों पर यह लागू नहीं हो सकता । धारा २ में हमने आदिवासियों को छोड़ रक्खा है लेकिन जहां तक हरिजनों का सवाल है वह तो इस कानून के अंदर आते हैं और उनके वहां जो लूज़ डाइवोर्स चलता है, वह ठीक नहीं है और लूज़ डाइवोर्स हमें कभी भी नहीं रखना चाहिये । हमारे भाई दामोदर

[श्री जांगड़े]

मेनन ने कहा कि जिन जातियों में यह डाइवोर्स चल रहा है, वे प्राग्रेसिव हैं। मैं ने अभी तक नहीं समझा कि प्राग्रेसिव से उनका क्या तात्पर्य है? प्राग्रेसिव के मानी मैं ने अभी तक नहीं समझे कि क्या होते हैं? क्या प्राग्रेसिव के माने यह हैं कि हम अनैतिकता की ओर बढ़ते जायें? अनैतिकता की ओर बढ़ते जाना क्या प्रगतिवाद है? यहां के लोगों की यह आम धारणा बन गयी है कि जो जितना ढीला है वह उतना ही प्रगतिवादी है पर मैं समझता हूं कि यथार्थ में ऐसा नहीं है। अनैतिकता की ओर ले जाने वाला शख्स प्रगतिवादी माना जाता है और जो एक बंधन बांधता है वह प्रतिक्रियावादी माना जाता है, मैं इस आम धारणा का घोर विरोधी हूं और मैं मानता हूं कि समाज की प्रतिष्ठा और नैतिकता को कायम रखने के लिए कुछ बंधन लगाने चाहिएं और वे हटाने नहीं चाहिएं। आज हम देखते हैं कि हम लोगों के समाज में बंधन होते हुए भी औरतें अपने पतियों को छोड़ कर चल देती हैं और मर्यादा भंग करती हैं इसलिए यह और भी जरूरी हो जाता है कि हमारे कस्टम डेफिनिट और सर्टन होने चाहिएं और वे ऐसे हों जो कि हम लोगों को इम्मौरेल्टी की तरफ न ले जांय। लूज डाइवोर्स का कस्टम होने के कारण आये दिन हमारे वहां इस तरह के केसेज होते रहते हैं और अदालतें और समाज कुछ नहीं कर पातीं और ४९७ में अदालतें यही कह सकती हैं कि जाइये आप लोग आपस में राज़ीनामा कर लीजिये इसका क्या मतलब निकलता है? पीछे वह औरत दो महीने बाद किसी दूसरे को अपना मर्द बना लेती है हालांकि पहला मर्द उसका जिंदा है। हाट, बाजार अथवा मेले में वह औरत गयी और महज अपनी वासना की तृप्ति के लिए दूसरा मर्द बना लेती है, तो ऐसी औरत को जो वासना के खातिर दूसरा मद कर लती ह उसको दंड नहीं दिया जा सकता, समाज दंड नहीं दे सकता, अदालत उसको दंडित नहीं कर सकती, ऐसी हालत में आप ही बताइये कि कौन उनको इस बेजा हरकत से रोक सकता है और उनकी भलाई कर सकता है। हमारी हज़ारों बहनें जाकर धर्म परिवर्तन कर लेती हैं खड़गपुर, कलकत्ता और बम्बई आदि स्थानों पर जा कर हमारी हज़ारों बहनें ईसाई और मुसलमान हो गईं। उनको बचाने वाला कौन है? उनको बचाने के लिए मैं पूछना चाहता हूं कि अदालतें क्या करती हैं, हमारा समाज क्या करता है और हमारे मंत्री महोदय क्या करते रहे हैं? इसलिए २९ धारा का जो दूसरा सेक्शन है, उसको हटा दिया जाना चाहिए।

आज हरिजनों और शूद्रों में और आदिवासियों में जो बालविवाह चलता है उसको रोकने की कोशिश कर रहे हैं। बालविवाह को रोकने में शारदा ऐक्ट असफल रहा है और आप भी हालांकि उसको रोकना चाहते हैं लेकिन आप उसमें असफल ही रहेंगे क्योंकि मैं आपसे पूछना चाहता हूं कि क्या आप उनके वहां जो बालविवाह प्रथा प्रचलित है उसके खिलाफ कड़ा से कड़ा क़दम उठाने को तैयार हैं? मैं पूछना चाहता हूं कि जब आप २० प्रतिशत के लिए यह कानून बना रहे हैं तो ८० प्रतिशत जनता में जो अनैतिक विवाह विच्छेद की प्रथायें चलती हैं, उनके रोकने के वास्ते आप कड़ा कदम क्यों नहीं उठाते और क़ानून में उस के लिए व्यवस्था क्यों नहीं करते? जब आप २० प्रतिशत वर्ग के लोगों की बुराइयों को दूर करने के लिए प्रयत्नशील हैं और क़ानून बना रहे तो ८० प्रतिशत लोगों में जो लूज़ डाइवोर्स के कारण बुराइयां हैं, उनको दूर करने की हिम्मत क्यों नहीं करते हैं यह कहनाकि ८० प्रतिशत लोग इसके खिलाफ़ रिवोल्ट कर देंगे, ८० प्रतिशत लोग इसको नहीं चाहते, या अदालत में खर्चा ज्यादा बैठेगा तो मैं कहूंगा कि आप अदालतों को डिसेंट्रलाइज़ क्यों नहीं

करते, आप अदालतों का विकेन्द्रीकरण क्यों नहीं करते, आप हर थाना तहसील में अदालत रखिये और पंचायतों को उनका फ़ैसला करने की पावर्स दीजिये, आज हम देखते हैं कि पचायतों में घूसखोरी चलती है और उसके कारण गरीब लोग मारे मारे फिरते हैं और कोई उनकी सुनवाई नहीं होती है, आप इसको ठीक करिये। विवाह विच्छेद की शर्तों को ठीक से और स्पष्ट स्पष्ट लिख दीजिये और लूज़ डाइवोर्स मत रखिये। पंचों को उन शर्तों के आधार पर ऐसे मामलों की सुनवाई के लिए पूरी पावर्स दीजिये।

इस तरह से आप डिसेन्ट्रलाइज़ेशन क्यों नहीं करते। आप इस बात को तो मानते, नहीं, केवल यह कहते हैं कि ८० प्रतिशत लोगों में डाइवोर्स है और वह बहुत उत्तम है। हम उन के राइट को छीनना नहीं चाहते यह उन के राइट्स का छीनना नहीं, उन की दुर्दशा को बढ़ाना है, अनैतिकता का प्रचार करना है और उन की वासना त्रिप्ति की इच्छा को बढ़ाना है। मैं देखता हूं कि मैं जब यह कहता हूं तो हमारी बहुत सी बहनें जो यहां पर हैं नाराज होती हैं। यहां पर तो शिक्षित बहनें ह, शहरों में रहने वाली हैं, वह नाराज हो जाती हैं, लेकिन देहात की स्त्रियों की आज जो दुर्दशा होती है उस को देख कर मेरी आत्मा रो रही है, और मैं उस रोती हुई आत्मा के स्वर में कहता हूं, माननीय मंत्री महोदय से विनय करती हूं कि वह इस की ओर ध्यान दें। हालांकि हमारे मंत्री महोदय इस विधेयक में एक शब्द भी, यहां तक कि इन्वर्टेड कामाज तक बदलने के लिये तैयार नहीं हैं। हम चाहे जो रायें दें, कुछ भी कहें, मगर मंत्री जी येन केन प्रकारेण इस बिल को पास करा रहे हैं। मैं उन से विनय करूंगा कि दफा २६ (२) को तुरन्त हटा दिया जाय। और मैं इस के बाबत कुछ नहीं कहनाचाहता।

Shri Pataskar: I am very surprised and pained at the same time that there has been a very curious combination for the purpose of trying to defeat a simple clause and a clause which has been placed before the House on realistic grounds. So far as the hon. Member, Mr. Chatterjee is concerned, I can understand that a Member who is naturally opposed to the very basis of this legislation should find such a ground on which he could condemn the other side on the ground that this is not a good one.

Shri N. C. Chatterjee: That is not a fair aspersion.

Shri Pataskar: Probably, if I had been in his place, I would have done the same thing because it is the task of the Opposition to oppose. But the point is look at the combination.

I know that my hon. friend, Pandit Thakur Das Bhargava is the greatest reformist Member of this House for whom I have got the utmost respect. He is also aware, probably, of some of the very unholy customs which are prevailing in certain parts of the country. Naturally, I can understand his opposition which is due more or less to his anxiety to reach the goal of having one uniform measure for at least the Hindus. I can understand that.

A third hon. Member, Mr. Jangde, probably because he belongs to a community which suffers from very bad customs, not realising what it is, when he found that two eminent Members of this House were saying something thought that there must be something bad in it. I can assure him that there is enough provision in the Act about what is the custom. I can say that the law has already been passed. Anything unreasonable, as he has pointed out, will not be allowed to remain after this Bill is passed (*Interruption*). If he does not believe me, let him not. Lately, I have found that he is not willing to believe......

Shri Jangde: I want to have some clarification.

[Shri Jangde]

मैं जानना चाहता हूं कि जिन लोगों में विवाह विच्छेद की प्रथा है उन में जब यह कानून लागू नहीं होता तो रैस्टिट्यूशन भाफ कंजुगल राइट्स, ऐलिमनी और दफा ४९४ ताजीरात हिन्द उन पर लागू होंगे या नहीं।

Shri Pataskar: My friend, with all his anxiety is, probably not very clear as what is being done so far as legislation is concerned on this matter. I can assure him that by the definition of custom, the way in which we are trying to prevent unreasonable things being done or immoral things being perpetuated and all that, of course, that will be seen. Therefore, I find that there is opposition merely because it is based on opposition to the basis of the whole Bill.

Mr. Deputy-Speaker: Does the hon. Minister say that if according to custom there are any other grounds for divorce than those set out here, they won't be allowed?

Shri Pataskar: Apart from that custom itself is defined here in clause 3. It says:

> "the expressions 'custom' and 'usage' signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family."

Then it is said:

> "Provided that the rule is certain and not unreasonable or opposed to public policy;"

Is it in the interests of public policy as my friend Mr. Jangde pointed out, that a married man after two months should leave his wife and go to another ?

Pandit Thakur Das Bhargava: What is public policy? Bigamy is permissible on account of public policy for Musalmans and condemnable for Hindus?

Mr. Deputy-Speaker: The hon. Minister may be allowed to go on.

Shri Pataskar: I will try with my limited resources to convince my hon. friends. I may not succeed in convincing them. But, I can assure the hon. Member, Pandit Thakur Das Bhargava that after a time, I can convince him. So far we have got different strata of society among the Hindus. I do not want to go into the historic reasons at this stage.

Shri H. V. Kamath (Hoshangabad): On a point of clarification, Sir.

Shri Pataskar: We know that for reasons—into the history of which I need not go into in detail now—we know that there are so many strata of society in this country which it is difficult to bring under one uniform rule for the present. Therefore, we are trying to put them together as far as we can so that a time may come when the development and unification reaches a level when it would be possible for me to hope as equally as my hon. friend Pandit Thakur Das Bhargava that we can have, on account of the social, economic and other factors, one uniform law applicable not only to the Hindus but also a time may come when we can have a uniform law for all the people who live in India. I cannot dream of that ideal now.

But, we are trying in this Bill to introduce divorce amongst people among whom it is not allowed. We are trying at least on that level to bring them together and therefore we are making some provisions which I think will be useful to them according to the procedure prescribed here. I have been hearing of the fashionable and the educated and all that sort of thing. I am not going into details. But for those who have already got it, for them we say that their custom will continue provided it is not immoral, it is not unreasonable and so on and so forth. Therefore, if we take a realistic view of the situation, I think, the present provision as it has been made, though it may not be ideal from the point of view of some gentlemen, will serve its own purpose.

In the Bombay Act, in the Madras Act, and in the Saurashtra Act, and not only that in the Baroda Act, when that great social reformer the last ruler of Baroda—I think he was the first man to introduce something like that in his territory and passed the Act in 1931—enacted it, every one of them had to see that whatever they passed is actually carried into effect and serves some useful purpose for they had to make progress as slowly and as consistently with the realities of the situation. For instance, you will find that there are so many customs that we do not want to interfere with, but, certainly, we have to put a check on them if they are unreasonable, if they are against public interest or policy. Therefore, with all my sympathy for the cause which has been pleaded by Shri Chatterjee and Pandit Thakur Dasji, I want some results to be achieved, not to put a merely ideological Bill on the statute book. It is from this point of view that I am unable to accept any of the amendments, though agreeing with the laudable ideas that they have put before me. If the hon. Mr. Jangde sees me I may be able to convince him because he is labouring under a misunderstanding. Otherwise, I have the fullest sympathy with whatever exists in his community.

Shri H. V. Kamath: On a point of clarification, Sir. As the phrase 'public policy' has been used by the hon. Minister, may I know whether that phrase is synonymous and co-terminous with Government policy or whether it is something different?

Shri Pataskar: It is something different; it is public policy and not Government policy.

Shri H. V. Kamath: What is the difference, Sir?

Shri Pataskar: The trouble with him is, the hon. Member came only today and the other day we have disposed of these clauses.

Shri N. C. Chatterjee: The Privy Council has said that public policy is an unruly horse.

Shri Pataskar: Now we have the Supreme Court.

Mr. Deputy-Speaker: I shall now put all the amendments to clause 29 to the vote of the House.

Mr. Deputy-Speaker: The question is:

In page 12, *omit* lines 42 to 47.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 13, *omit* lines 1 to 4.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, line 2, *omit* "recognised by custom or".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, line 2, *omit* "or conferred by any special enactment"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, lines 3 and 4, *for* "whether solemnized before or after the commencement of this Act" *substitute*:

"silemnized before the commencement of this Act."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 13,-

(i) in line 3, *omit* "whether'

(ii) in line 4, *omit* "before or".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, *after* line 4, *add*:

"Provided that it would be lawful for either party to the marriage dissolved according to custom or usage to move the Court under sections 24, 25, 26 and 27 of this Act for necessary orders."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 13, *for* lines 11 to 14 *substitute*:

'The provisions of the Special Marriage Act, 1954 shall cease to have any effect on the Hindus after the commencement of this Act"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 29 stand part of the Bill."

The motion was adopted.

Clause 29 was added to the Bill.

Shri Rano (Bhusaval): I have got one amendment to clause 30. I beg to move:

In page 13, *for* clause 30, *substitute*:—

"30. *Repeals.*—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946) and the Hindu Marriages Validity Act, 1949 (XXI of 1949) are hereby repealed."

Mr. Deputy-Speaker: The question is:

In page 13, *for* clause 30, *substitute*:—

"30. *Repeals.*—The Hindu Marriage Disabilities Removal Act, 1946 (XXVIII of 1946) and the Hindu Marriages Validity Act, 1949 (XXI of 1949) are hereby repealed."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 30 stand part of the Bill."

The motion was adopted.

Clause 30 was added to the Bill.

Mr. Deputy-Speaker: It is here pointed as "1954" and the "Fifth year". These words will be corrected by the Speaker. They need not be gone into here.

12 P.M.

Mr. Deputy-Speaker: It need not be put to the vote of the House formally. We shall now take up Clause 1, the Enacting Formula and the Long Title.

Shri V. G. Deshpande: There are two amendments of mine, 169 and 170. I beg to move:

(i) In page 1, in the Long Title, *for* "marriage" *substitute* "divorce".

(ii) In page 1, line 5, *for* "Hindu Marriage Act, 1954" *substitute* "Hindu Divorce Act, 1955".

Mr. Deputy-Speaker: Is it the intention of the Mover that there should be divorce without marriage?

Shri V. G. Deshpande: That is the real purpose of the Bill.

Mr. Deputy-Speaker: The question is:

In page 1, in the Long Title, for "Marriage" *substitute* "divorce."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 5, *for* "Hindu Marriage Act, 1954" *substitute* "Hindu Divorce Act, 1955".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 1, the Title and the Enacting Formula stand part of the Bill."

The motion was adopted.

Clause 1, the Title and the Enacting Formula were added to the Bill.

Shri Pataskar: I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: Motion moved:

"That the Bill be passed."

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Mr. Deputy-Speaker, during the last few days I have not spoken at the various stages of this Bill. But I have taken a deep interest in these discussions and followed them. As,

perhaps, the House knows, I have been deeply interested not only in this Bill, but in certain matters connected therewith, and it is a matter of great gratification to me that we have arrived at this stage now, the third reading stage of this Bill and I have every hope that this House will finalise it in the course of the next few hours.

I approve of this Bill, of course. It is not merely what is incorporated in this Bill but rather something more than that which this Bill represents. It appeals to me greatly, I think it is highly important in the context of our national development. We talk about Five Year Plans, of economic progress, industrialisation, political freedom and all that. They are all highly important. But I have no doubt in my mind that the real progress of the country means progress not only on the political plane, not only on the economic plane, but also on the social plane. They have to be integrated, all these, when the great nation goes forward.

We work peacefully in this country and we have brought about a great political change. That is, from being a dependent country we have become an independent country, by and large, through peaceful methods. We are pursuing that peaceful way to bring about changes. But let it not be forgotten that the changes—political or other—that are being brought about are, well, in a sense revolutionary in their context, although they might be brought about largely cooperatively.

Now, I welcome this particular measure because I think it is of the highest importance that we should take up the social challenge. On a previous occasion, speaking, I think, on not this Bill, but on a similar measure—the Special Marriage Bill—I ventured to say something about my reading. I speak, of course, before experts with some fear of trepidation, but I ventured to say what my conception of Hindu Law had been in the past.

Hindu Law had never been rigid; Hindu law had a certain dynamic element in it: indeed that was its strength, because any law that is rigid and is not dynamic is inevitably static and does not change with the changing times. Hindu law has that dynamic changing quality. It is not a law of the Statute Book which is changed when you change it. It encouraged all kinds of customs to grow up. When they grew up it acknowledged them. In fact, even today in India there are so many varieties of Hindu Law,—In the South, in the North, in the East,—that it is very difficult to say that this is the one and the only Hindu Law. You see the variety all over. Then again, everyone knows that a great majority of Hindus, apart from the few topmost castes, are governed by all kinds of customs. Would anyone here venture to say that they are not Hindus and drive them out of the Hindu fold? Surely not. Therefore, the essential quality of the Hindu Law in the old times was this dynamic quality, not changing by the decree or statute, but allowing changes to creep in, so that they might be in the fitness of the changing conditions of society.

Now I venture to ask: can any law, whether it is social or economic, be equally applicable when society has changed completely? Let us take India, broadly speaking, a thousand or two thousand years ago. The population of India in those days was one hundredth of what the population today is and India was a community of a large number of villages and some small towns. Now surely modern conditions are entirely different. In the cities of Delhi, Calcutta, Bombay and Madras industries are growing and new social relations are growing up. Can any one say that while all these changes are taking place—tremendous changes—in our social set-up, certain things must remain un-changed? The result is that they will not fit in; the result is very bad one—that while you appear to hold on to something, that something which has gone, or is in the process of going, cracks up, because it does not fit in with the changed conditions

[Shri Jawaharlal Nehru]

This Bill has taken a few days in discussion here, but behind it lies years and years of investigation,—I forget how long. First, there was Sir B. N. Rau's Committee which functioned for a number of years. Here in this Parliament this matter has come up for the last three and a half years. Before this Parliament came up, in fact, Bills were repeatedly moved. Proceeding this was the tremendous investigation by the B. N. Rau Committee. No subject, I take it, has been so much before the public, has been discussed so much and opportunities given for its consideration by the public as this particular subject in its various aspects,—the question of the reform of the Hindu law in regard to personal relationships. Now that was right because it was important. After all, politics are important, economics are important, very important, but in the final analysis human relations are the most important.

This morning a fact came to my notice, that in the small State of Saurashtra, one of our smallest States, one, if I may say so, of our advanced States in many ways, socially speaking, there is on an average one suicide a day among the women because of mal-adjustments in human relationships. The figure was 375 in a year: 375 in a population of 40 lakhs, men, women and children. You can calculate the promotion it works out in that State. These are regular authentic figures which the Chief Minister of that State gave me. This shows the mal-adjustment and the difficulties that more especially the women have to face. I have no doubt that such similar statistics may be collected from other parts of India. One has to face that situation.

I had the privilege of listening to the speech of the hon. Member opposite, Shri N. C. Chatterjee. The more I listened to it, the more confused I got and surprised. He dealt at great length with what is a sacrament and what is a *samskara* and other things. He is quite welcome: let it be a sacrament. It concerns us and let us get at what is a sacrament exactly. What does it mean? A sacrament, I take it, is something which has religious significance, a religious ceremony. A Hindu marriage is a religious ceremony, undoubtedly. Nobody doubts that. It has a religious significance. But, does it mean that it is a sacrament to tie up people who bite, who hate each other, who make life hell for each other? Is that a sacrament or a *samskara*—I do not understand. Obviously, that is not the question, I admit. I would go a step further. I think all human relationships should have an element of sacrament in them. More so, the intimate relationship of husband and wife, apart from other relationships, should have an element of sacrament in it. There is something rather fine in human relationships provided they are good relationships. Otherwise, that relationship is the reverse of fine. It is awful. If they cannot fit into each other, if they are compelled to carry on together, they begin to hate each other and their life is bitter. The whole foundations of their existence are bitter. Surely that is not a sacrament.

He quoted, he referred to Manu and Yagnyavalkya, very great men in our history, who have shaped India's destiny. We admire them. They are among the heroes of our history. But, is it right for Shri N. C. Chatterjee or any one to throw Manu and Yagnyavalkya at me and say what they would have done in the present conditions of India?

Shri N. C. Chatterjee: I am sorry, the Prime Minister was not here; Shri Pataskar threw them on me and I only reciprocated rightly.

Shri Jawaharlal Nehru: The point is, it is very unfair for Manu or Yagnyavalkya or anybody else to be brought in as a witness as to what should be done in the present conditions of India. The conditions are completely and absolutely different. I admit that there should be, and there are, undoubtedly, certain principles of

human life which, normally speaking, do not change and should not change. There are certain bases of human life. But, in adapting them in legislation and other things, you have to consider the conditions as they are and not as they were 1000 or 2000 years ago.

Then, again,—I speak subject to correction by Shri N. C. Chatterjee,—he referred to some learned professor of a Hindu University who has produced a pamphlet. I happened to see the pamphlet. It does not bear his name; I do not know his name. Because he has drawn my attention to it, I looked into that pamphlet. I was surprised that any person, learned or unlearned, should have produced that. What is that pamphlet? That pamphlet is based chiefly on a certain report in America known as the Kinsey Report. It is based on showing how the conditions in the United States of America are. First of all, for a professor, learned or unlearned, to go about issuing pamphlets, condemning other people and customs of other countries, is not a good thing. It is not good for him to do or for any one of us. If it is a scientific study, well and good. The scientists can do it. To make that a parallel and say, "See how horrible the conditions in America are, if you pass this Bill, you will have the same conditions," is not only *non sequitor* in logic, but it is a bad way of approach. Very few of us who are present here, I would venture to say, none of us, is competent to give any real opinion, worthwhile opinion, about the conditions in America or England or Russia or anywhere. We read about them in the newspapers; may be we read books about them. We do not know the context, we do not know the historical development, we do not know the facts and a hundred other factors. The major thing that is affecting human relationships in the world today is the growth of industrialisation. It has nothing to do with the law of marriage or divorce and the rest of it. It is the growth of industrialisation, the industrial economy of the countries, vast numbers of people living in huge industrial centres, resulting in all kinds of neurosis and other things. That can be studied in a scientific manner or otherwise. To apply that parallel to India and say that if this Bill is passed, all kinds of looseness, laxity and licentiousness will prevail, is narrow and unworthy of a professor, learned or unlearned

Apart from this, I should like in this context, with all respect, to say something about a habit that some of us have, everybody has,—to condemn other people, other countries their customs, their religion whatever it may be, their economic principles or anything and take pride in the fact that we are superior. That is a very bad way. I would not call that in the wider context a civilised approach. It is a narrow approach and an uncivilised approach to these matters. The right approach is, watch them, learn from them, be warned by what you see there, certainly, avoid the things that you think are wrong, accept the things that you think are right, do not shout about things in other countries, especially with regard to the people, instead of condemning them, rather think of our own failings so that we may improve them. That is the right approach to strengthen ourselves.

In this context, with your permission, I should like to quote an ancient passage which, I hope, represents the real spirit of Indian culture, the real spirit of that old *samskriti*, that is talked about by people who, sometimes, do not themselves exhibit it. I am going to quote from the famous rock Edict of Asoka, 2300 years ago, Rock Edict No. XII.

"The beloved of the Gods does not value either gifts or reverential offerings so much as that of an increase of the spiritual strength of the followers of all religions.

This increase of spiritual strength is of many forms.

But the one root is the guarding of one's speech so as to avoid the extolling of one's own religion to the decrying of the religion of another, or

[Shri Jawaharlal Nehru]

speaking lightly of it without occasion or relevance.

As proper occasions arise, persons of other religions should also be honoured suitably. Acting in this manner, one certainly exalts one's own religionist and also helps persons of other religions. Acting in a contrary manner, one injures one's own religion and also does disservice to the religions of others.

One who reverences one's own religion and disparages that of another from devotion to one:s own religion and to glorify it over all other religions does injure one's own religion more certainly.

It is verily concord of all religions that is meritorious as persons of other ways of thinking may thereby hear the Dharma and serve its cause."

Now, the word "religion" is used. I take it the word in the original was "dharma", which has, of course, a wider significance, and it applies not only to the question of decrying or praising religions, but ways of life, ways of people and others in the wider context, and I wish that this inscription of Asoka which has been carved out in some of the rocks should be multiplied and be made available, visible, to vast numbers of our people, because I do believe that represents the essence of the soul of the old Indian approach which has made India strong, which has given strength to Indian culture in the past, and to the extent it survives today, it gives us strength today. Now, we see something entirely opposed to this—this kind of running down others, condemning others, extolling oneself that we are good, our country is good, or as groups of individuals we are good. Well, goodness shows itself, it does not require extolling by the persons concerned with that particular matter.

And so, in this matter I would submit—in this and connected matters—that we should always avoid running down other countries. Of course, in the course of discussion when questions come up, we have to deal with their policies and that is all right, but never run down a people or their customs or their ways. We do not know how they have grown, how they have been conditioned by past ages. How to compare the people, let us say, of Central Africa, to the people of Europe or Asia? We have had a different conditioning. How can we compare them? We may like something that they do, dislike something that they do, and there the matter ends. And we should accept this great variety that exists in the world. Even in this little world of India there is tremendous variety. The more I wander about, the more I am surprised and amazed and pleased by seeing this great variety of India. India cannot go ahead, cannot progress, unless it accepts this variety in all its richness and at the same time builds up unity. If we try to impose our own conception of things, our own ways of life, our own way of eating, dressing, standing, sitting, whatever it may be, on somebody else who has a different way, well, then not only do we crack up the structure of a united India, but we are imposing ourselves on others. Let us impose ourselves by argument, of course, by goodwill. Let them accept. But never impose forcibly, because the moment we do that, it is a bad approach, especially when it affects their present life etc.

Therefore, I am glad that in this Bill, custom etc., has been excluded. It will be wrong to go and interfere with custom. Again, if I may refer to this again, the fact is that 80 per cent. or whatever the percentage of the Hindus, actually at the present moment enjoy divorce in some form or other—if that is so—do you want the elect to remain the elect, cut off from the rest looking down upon them, a few higher castes considering themselves the real descendents of Manu and Yagnyavalkyia and that others are outside the pale? That is not the way of democracy, nor is it the way of building up a unified society in India. Even look-

ing at it from the narrowest viewpoint of Hinduism, is it good for Hinduism to look at this point in this way?

Now, we are often told, reminded, of the high ideals of Indian womanhood, Sita and Savitri. Well, everyone here, I take it, admires those ideals and thinks of Sita and Savitri and other heroines of India with reverence and respect and affection. Sita and Savitri are mentioned as ideals of womanhood for the women. I do not seem to remember men being reminded of Ramachandra and Satyavan, to behave like them. It is only the women who have to behave like Sita and Savitri, the men may behave as they like. No example is put forward before them. I do not know if Indian men are supposed to be perfect, incapable of any further effort or further improvement, but it is bad that this can be so. It cannot remain so, you cannot have it so under modern conditions—either modern democratic conditions or any conditions of modern life. You simply cannot have it. You cannot have a democracy, of course, if you cut off a large chunk of humanity, fifty per cent. or thereabouts of the people, and put them in a separate class apart in regard to social privileges and the like. They are bound to rebel, and rightly rebel against that.

Some people, I believe, some hon. Members spoke with disdain of what they consider certain traces, certain developments in what might be called the social life of upper class Hindus, upper class Indian women. Well, I am not a great admiral of certain types of development which we see in Delhi City, in New Delhi, and the like, but what does that lead to? Because we do not like certain developments, let us try to improve them, let us try to change them. That is a different matter. But what exactly does that argument lead to? Does it lead to this that you should create or perpetuate or petrify conditions which themselves are leading to these cracks and break-ups in Hindu society because we find nothing to fit in there?

Then again, it is said: "It is all very well. We are in favour of it, but it is not good enough unless you create economic conditions for the women." That is an argument which may be considered valid logically, but, when applied to these things, it simply means: "Do not do this and you start the other. You have not done the first, you are doing the second." So, the real, basic approach is that nothing need be done. It is quite absurd. You have to make some beginning somewhere. Of course, I entirely agree that the basic thing is economic condition, equality of economic opportunity. To some extent, I hope another Bill which is following will do it. Let us go forward still in that line, but to stop a good Act because it does not completely meet the demands of the situation is never to do anything at all.

The House will remember how it tried at first—that was not in this Parliament, but in the previous Parliament—how the then Government brought forward what they called the Hindu Code Bill, a huge document of hundreds of hundreds of pages. We considered it in various ways, introduced it in the House, referred it to committees. It was so big that we could never get through it. In fact, we never started properly with it, and it was patent that if we went through it, it might take a few years—all committee sittings and all that clause by clause consideration could not be done. Therefore, it was decided to split it up into several compartments and deal with each separately. This is the first part of it. The second I hope will be dealt with and sent to the Select Committee later. This is the only way to deal with human life. You cannot take every aspect, the condition of Indian women, all together, and improve it some way. Apart from the complication, the difficulty involved is that, simply the time element comes in, and you rub up so many other groups and things and they object and say it is not practicable at all. Therefore, you have to take one by one. We take this here now, and I hope we shall take something else next.

[Shri Jawaharlal Nehru]

I referred to Indian women and I said that I am no admirer of certain tendencies which are visible. They are not visible in Indian women only, they are visible elsewhere too, but I would beg of you again not to fall into the trap of appearing to criticise other countries or other women or other people in other countries about whom we know very little. We may have gone, some of us may have gone abroad, spent two or three weeks or months adroad, and formed some opinions. Is that the way you would like a foreigner to come to India and form an opinion of Indian society? You would not. When he comes here for two months and writes a book, you object highly because he has picked out some things which he dislikes and runs you down. He does not know the background of it. As I have often said, the man goes to Banaras, from Western Europe or America and all that. Now, if I go to Banaras, there are many things that I do not like in Banaras. The streets are not clean and this and that—there are many things. But Banaras evokes in me a thousand pictures of India's history, of Buddha preaching in Sarnath, and a hundred other things happening, the whole seat of India's culture and development and this and that. I am filled with india's past history when I go to Banaras. When some tourist comes from abroad he sees the filth and dirt of Banaras lanes. They are both true, if he says that the Banaras lanes are not clean, the streets of Banaras are filthy, unclean and the like. But it is something deeper than that. But we who go abroad then fall into the same trap. We see some filth—social and otherwise—and think that that is the basis of society there. Do you think that the civilisation of the west or your civilisation or the civilisation of any country has been built on these week foundations, immoral foundations, low foundations? Do you think that any civilisation, any culture, can be built up on that loose basis? Obviously not. They may have been colonial powers—they have been colonial powers. They may have dominated over us—they have done so. They have done injury to us. But the fact is that they have built a great civilisation in the last 200 or 300 or 400 years, and you must find out the good and take the good from them. After all, we have got to build ourselves on our own soil, basically on our own ideas, but keeping the windows of our mind open to the ideas, to the winds, that come from other countries, accepting them, because the moment we close ourselves up, that moment we become static. Whether we close ourselves up by law, by dogma, by religious dogma or any other kind of closure, it is preventing the growth of the spirit of man, and it is bad, for the individual, for the group and for the country. And it has been the greatness, I think, of the basic Hindu approach of life that it was not rigid. Whether in philosophy or anything else, as everybody knows, we have a way of civilisation or a way of orthodoxy completely opposed to each other. We accept them; it is a good thing. There is a spirit of tolerance; a man may be an atheist and still not cease to be a Hindu. May be it is not religion in the ordinary sense of the word. But in regard to certain social practices, rigidity comes in. Rigidity comes in when you say you must not eat with so and so, you must not touch so and so. That rigidity is a thing which has weakened and brought many disasters on Hindu society. Now, we have to break that rigidity. I am glad we have broken, and we are continuing to break, the rigidity in regard to untouchability. I hope we shall break the rigidity due to these caste divisions. Now, in that context, it becomes important that you should break this rigid statute law or interpretation of law by judges which has brought about rigidity in regard to human relations in Hindu society. It is because of that that I welcome this, because it breaks that rigidity. As anybody who has read this Bill can see, the conditions provided for divorce etc. are not easy. They are pretty difficult. For any one to say that this is something which will let loose

licentiousness all over India is fantastic. There is no basis in fact for that.

So far as I am concerned, I do not propose to say anything about women in other countries. They are good or bad, as the case may be. About the social fabric of other countries, I am not competent to judge. Though I may be a little more competent perhaps, because of the opportunities I have had of travel abroad, than many Members here, yet I am not competent to judge. But I can say with considerable confidence, expressing my own faith, that the womanhood of India is something of which I am proud. I am proud of their beauty, grace, charm, shyness, modesty, intelligence and their spirit of sacrifice and I think if anybody can truly represent the spirit of India, it can be truly represented by the women of India and not by the men. So it is, and I may tell you that even now in the modern age, some women of India—not many—go out of India, may be on some official or unofficial work, in commissions and the like. Every time that a woman has been sent, she has done well, not only done well, but produced a fine impression of the womanhood of India.

Shri H. V. Kamath: Question, question.

Shri Jawaharlal Nehru: I am glad the hon. Member has questioned it in this House. By questioning this he has tried to show, shall I say, how life is odd and curious and something ludicrous.

Shri H. V. Kamath: We can't hear you. Please speak up.

Shri Jawaharlal Nehru: I find every aspect of life even in this House.........

Mr. Deputy-Speaker: The hon. Member is a bachelor.

Shri Jawaharlal Nehru: Perhaps that has caused certain misfits.

Shri H. V. Kamath: How about widowers, Sir?

Shri Jawaharlal Nehru: Well, when I speak about women, I am not saying that every woman in India is ideal. That should be an absurd thing to say.

Shri H. V. Kamath: That's all right.

Shri Jawaharlal Nehru: I am grateful for his acquiscence.

But I do say that not every man who has represented us abroad has always brought too much credit on us, but every woman who has gone has whether it is in commissions, committees etc. It is true that fewer women have gone abroad; so it is difficult to take out averages. But still I have the greatest admiration—I am not talking about the ancient ideal of Indian womanhood, which I certainly admire in the old context—for the women of India today. I have faith in them; I think they have solid foundations of character and the rest, and I am not afraid to allow them to grow, to allow them freedom to grow, because I am convinced that no amount of legal constraint can prevent society from going in a certain direction today. And if you put too much legal constraint, the result is that it does not bend; it breaks, the structure breaks. I mentioned a simple case, of Saurashtra. There are many cases given in B.N. Rau's Report, and I think if you go into this matter, you will find that the position of Indian women, more especially of the upper classes is parlous today; it is bad legally, economically and socially speaking. Therefore, I welcome this Bill, because it is a first good attempt to improve that condition and to shake off that rigid structure.

Shri H. N. Mukerjee (Calcutta North-East): We are going very soon to put on the statute book something which has been long overdue. In spite of the hue and cry which was raised over this Bill by my friend Shri N. C. Chatterjee, and others, this is by no means a revolutionary measure. It only seeks to remove some of the multitudinous disabilities of Hindu women and that too in a restricted sphere, namely, marriage, and within the orbit of the present economic subserviance

[Shri H. N. Mukerjee]

of woman to man. Yet, as far as it goes, it is a very welcome measure, much needed as far as the interests of the country are concerned, and I congratulate the Minister in the Ministry of Law, Shri Pataskar, on the manner in which he has conducted this Bill in this House.

There are certain changes which, I feel, might very well have been incorporated in this Bill, particularly regarding the paradoxical provision about the obligation of women to pay alimony on divorce; then further there are other clauses regarding the unsavoury provision about resolution of conjugal rights; there are certain other clauses about custody of children and certain defects in the divorce clause in regard to desertion and cruelty and so on and so forth. I feel that in these regards, certain improvements could have been effected. But as far as it goes, as I have said before, we welcome this measure, and we hope that Government will take note of the failings of the people all over the country in regard to these aspects of this Bill which require to be improved upon.

A great man once said that marriage was an impediment to all great enterprises, whether of virtue or of mischief. However, the married state is to man in society the normal condition of affairs, and problems marital as well as extra-marital have been a perpetual headache to society since the dawn of civilisation. If like my hon. friend Shri Nand Lal Sharma or Shri N. C. Chatterjee, we claim that in *Shruti* and the *Smritis* we have found a solution to all these questions which have agitated man since the dawn of civilisation then I feel it only shows a pathetic blindness to the forces of life around us. That we are beginning to shed that blindness is evidenced by this Bill before the House.

In the old days, the *Smritikars* and their commentators by a judicious process of selection and interpretation of texts could mould the law, if they so desired, to suit the needs of changing times. At present there are the courts of law, but the courts of law have not the same freedom of interpretation as the commentators, so, if the growth of the law is not to be impended, the Legislature has got to intervene. I think therefore that there is a very clear and convincing and unanswerable case that the Legislature should intervene in this kind of social legislation.

I like a whole-hogger, but I do not see my hon. friend Shri Nand Lal Sharma here; in comparison, I fear my hon. friend Shri N. C. Chatterjee is neither fish nor flesh, he eats neither, and he is a vegetarian in every sense of the term.

An Hon. Member: He eats fish all right.

Shri N. C. Chatterjee: No.

Shri H. N. Mukerjee: Shri Nand Lal Sharma has taken a stand unequivocally, on the eternal verities which are enshrined in the *shruti*. With all respect for the heritage of our ancient civilisation, I say that if we go on banking upon the eternal verities in the Vedas, for example, that is a fantastic aberration of thought. If there is inequity and wrong in the Vedas or elsewhere, let us not veil it as sanctity. I do not know why these brave words are used by our people from time to time in order to hide inequity. I know, at one time the expression 'Harijan' was coined as a synonym for untouchables; and 'Harijan' was supposed to indicate the people of God, as if you have put them in a special enclosure, so that the votaries of God may exercise their pity and their philanthropy and their pity in regard to these people. We gave them a high-sounding title. We called the poor *daridranarayan* as if they were the beloved of the Gods. The idea was that unless you had the poor with you always, your charity-mongering acrobats could not exercise their philanthropy and their occupation would be gone. We want to hide the shame of having untouchables in our society or having poverty in our society by giving high-sounding titles to those whom we have treated as untouchables and to those whom we have deprived of the neces-

saries of civilisation. In regard to women also, we have said all kinds of things; we have used all kinds of superlatives; we have exhausted the whole vocabulary of adjectives in order to express our veneration for women, but as far as the condition of women in our history is concerned, we have not taken note of the reality.

The other day Shri N. C. Chatterjee quoted from out of his own experience, how a child widow, an aunt of his, had said to him that it was better that the *sati* system had continued, because the life of a child widow was agony, continuing agony, and she was being burnt every day of her life. I say this has been the wail of Indian women throughout the ages. I recall that beautiful symbolism in the *Ramayana* where after repeated *agnipariksha*, after repeated subjection to the ordeal of fire by Ramachandra, Sita had to say to her mother earth, that she could not tolerate that kind of thing any longer, and she wanted to be taken back into earth by her mother. That represented the wail of Indian women. And Shri N. C. Chatterjee's experience related yesterday represented how more or less the same condition of things has continued right down to this day. But we have tried to cover it up with all kinds of sanctimonious declamations.

I say I have the greatest respect for our traditions. I have gone out of the way so many times, as you know very well, to quote from our ancient scriptures or from our ancient literature, only to show how very great is the homage which I pay to our cultural legacy. But I know there are aspects in that legacy which we have got to shed altogether. This legislation is one instance of how we are trying, haltingly but at the same time with some determination, to get rid of that incubus of the past which should no longer be allowed to dominate over us. Let us not forget how obscurantists behaved when Ram Mohan Roy and others stood to efface the shame of the practice of *sati*. I find also that Max Mullar has said how the Vedic text was perverted in order to prove that *sati* was permitted by the Vedic scriptures. Max Mullar has said:

> "This is perhaps the most flagrant instance of what can be done by an unscrupulous priesthood. Here have thousands of lives been sacrificed and a practical rebellion forced on the authority of a passage which was mangled, mistranslated and misapplied."

The *sati*wala *pandits* went right up to the Privy Council in those days. And I fear there are some pedants among us here who will go to the Supreme Court to plead that some provisions of our Constitution is negated by this kind of social legislation.

We should remember also another very great man whose name, I think, has been mentioned only once during the discussion, and that is Iswar Chandra Vidyasagar. We know how he had to fight in order to establish the right of Hindu widows to remarry if they wanted to do so.

As a rule, however, as our Hindu Mahasabha friends choose to forget, Hindu sages had an immeasurable tolerance for human weakness and vulnerability. I could quote to you so many instances,—but they are quite unnecessary to show how this great tolerance has been a feature of Indian civilisation.

After all, Socrates was a much more significant person than Miletus who was merely a moral man; Jesus had greater goodness than the Pharisees who observed all the conventional canons of behaviour. So, we may say that there are so many ancient precedents for it, that if love without marriage is illegal than marriage without love is also immoral. But we find that in our ancient history, so many things happened which show—particularly in the *Mahabharata*—how our people had an amplitude of mind. There were such stories as that of Viswamitra and Menaka. Even heroes faltered and stumbled in the narrow path of conventional duty; and men very much better than most of us, who have done great things which

[Shri H. N. Mukerjee]

we have never dreamt of doing, have also been the victims of common frailty. Vyasa was born of an unmarried non-Brahmin girl. Bhisma was the son of an unmarried woman. Puru was the youngest son of Sarmishta who was the princess in attendance on the queen, and therefore, not exactly the wife of the king, Yayati. And yet the sage Kanva, according to Kalidasa, when sending Sakuntala to her husband's place asks her to behave as Sarmishta did for Yayati.

These illustrate how really we wanted to have a flexible and a liberal scale of moral values, and how we wanted a code of conduct which could be adjusted to the necessities of the day, to the fact that men and women are people of passion, people of feeling, people of emotion, and they cannot always observe those conventional codes which are made so much of by the reactionaries of today.

I find also how there is a reference to this idea of tolerance in Apastamba who was a great authority on the *Grihyasutras*. There he lays down certain requirements of a girl who deserves to be married. He says it is necessary to exclude certain types of girls when you are going to choose a bride. He says it is necessary to exclude

> "a girl who has a fine younger sister, one whose age is too near to that of the bridegroom, who has the name of a *nakshatra*, or a river or a tree, or whose name end in R and L."

But, later, Sir, he himself says:

> "A wife who is pleasing to his mind and his eyes will bring happiness to him. Let him pay no attention to other things."

Such is the sage's opinion. This is how Apastamba laid down his rules. Our ancestors knew that life was no dogma; that courses of conduct could not be determined on the basis of rigidity which moralists and puritans of the sort that we have found represented in this House, want to be established.

It is necessary, therefore, that we should not make an inhuman insistence on asceticism and its glories as a *sine qua non* to rightful social behaviour. In our heroic age there was tolerance That vanished later, in the time of the *puranas* to the detriment of the race and to the sorrow of our people.

Some Members have suggested that this kind of legislation will lead to promiscuity. I feel that promiscuity is something which cannot be changed into something else merely by legislation. If there is promiscuity it is a disease which has to be treated by other social remedies, remedies like economic independence of women, opportunity for all to live a good life, opportunities for all to choose a real partner in life and, so on and so forth.

I have also heard some fear expressed about the results of this kind of legislation, but that has been sufficiently answered by those Members who have said: "We know our people and we know the special qualities of our women. Therefore there is no reason why we should have any misgivings in our mind regarding the working of this legislation."

I have heard also certain oblique references made to Communism and certain members have tried to suggest that Communist support to this Bill is due to the fact that Communists are supporters of social libertinism, that we want licence in social matters. In regard to this, I need not give an extended answer, but I shall quote what Lenin said in 1920 in regard to promiscuity, in regard to libertinism in sex relations. Lenin said in 1920 to a woman revolutionary leader of Germany, Clara Zetkin:

> "You know, of course, the notorious theory that in Communist society the gratification of sexual passion is as simple and commonplace an act as drinking a glass of water. Those who support it

say they are Marxist. Thank you! But Marxism it is not. Things are not quite as simple as that. It is not merely something natural to us that is fulfilled in the sexual life, but also something which we have acquired through culture, however lofty or low that may be. Thirst, of course, must be satisfied. But is there a normal man in normal circumstances who would lie down in the mud and drink from a puddle? Or, say, from a tumbler, the rim of which many lips have made greasy? And the fact which is of greatest importance is the social aspect of the problem. The drinking of water is an individual act. In love, on the other hand, two beings are involved. And a third, a new life, may appear. It is just here, in this fact, that the interests of society are involved. There is the duty to the community. The revolution requires concentration, an increase of strength, both from the masses and from the individuals. It cannot tolerate such orgies as are normal to the heroes and heroines of D'Annunzio. Sexual licentiousness belongs to the burgeois world. It is an evidence of decay. But the proletariat is a rising class. It has no need of intoxicants as narcotics or as stimulants. Self-control, self-discpline is not slavery. No, even in love it is not that."

I give you, Sir, this extended quotation to show that while Communists are not puritans, they are purists, no doubt, they do not deny life, on the contrary, they affirm it, they accept life with all its problems, with all its massive glories and shames at the same time. They want to work it in such a way that it would bring about the greatest happiness to the greatest number. Let us, therefore, not forget the limits of law and the limits of the consequences which we can expect to ensue out of the Bill before us, particularly in the present set-up of things. When no basic attack on economic problems has yet been made, we cannot expect this kind of legislation to bring us all the desired results.

Then again, marriage is a psycho-physical relationship of such intimacy that law can only register its beginning and its end, but unaided by social engineering, law by itself cannot effect satisfactory continuance of marriage on the foundations that we desire. But law can check hasty divorce. It can prevent injustice in dissolution of marriage. When we have a new society shorn of the sin of avarice and all the evils that flow from it, happy and healthy homes, happy and healthy human relationships will be the norm. Till then Sir, all that we can do is to try to eliminate avoidable unhappiness and to try to minimise to the utmost the unhappiness that cannot be altogether eradicated. To that, Sir, this Bill makes some, though not a very striking, contribution. Therefore, Sir, I welcome this measure and I again congratulate Shri Pataskar on the way in which he has piloted this Bill in this House.

Shri N. C. Chatterjee: Sir, I was going to offer a tribute to Shri Pataskar, not to congratulate him on the passing of this Bill, but on the way he has stood and fought for a bad Bill. But, the Prime Minister was brought in to give his blessing at the last minute. I regret to say that the Prime Minister strayed far far away from the subject matter of discussion, otherwise a man like him should not mix up the Kinsey Report and the pamphlet by a distinguished university professor, a professor of jurisprudence of the Benaras Hindu University. I do not know whether he ever had the privilege of reading that memorandum. But, if anybody dispassionately reads it and does not take simply fragments from somebody, he will see that it is a very big sociological study of problems based upon unimpeachable documents. The distinguished professor—Prof. Deshpande—pointed out that there is today an enormous increase in pre-adolescent sexual relationship

[Shri N. C. Chatterjee]

in some of the western countries and he has quoted from Kinsey Report. What is wrong in Kinsey Report? What is wrong there? That Report is the product of the efforts of greatest sociological experts that America has produced. It is produced under the auspices of a great University in America. Very thoughtful men are writing books on that. Very important controversial issues have been raised by that Report. The Professor has done very well. We should thank him drawing our attention to this aspect of the Kinsey Report. He has marshalled facts and figures. Not one of them had been controverted either by the Prime Minister or by Shri Pataskar, the Law Minister. What is the good of saying that you should pay respect to women of other countries. This is an insinuation that we on this part of the House, or the distinguished professor of the Benares University have no respect for women of other countries. It is far far from the truth. Nobody will be a Hindu if he does not respect women of other countries. But, what has that got to do with the subject under discussion? Foreign women have been brought in unnecessarily by the Prime Minister in his speech—irrelevantly I strongly say. What can they possibly have anything to do with the Hindu Marriage Bill?

Then he said a lot about Manu and Yagnavalkya. I would ask him: has he ever read Manu? Has he ever read Yagnavalkya? Has he the time to do it?

Now, what we are fighting for is this: that India has stood for some principle; for some ideal; for some cherished ideal and that ideal should not be lightly brushed aside. I never stood against monogamy. I never stood against other things. Our Communist friend comes forward to give his blessing. He has spoiled the case of Shri Pataskar himself by quoting Communist scriptures. We need not quote Communist scriptures, for this. What I am pointing out is this. Nobody has protested against monogamy. Polygamy has died out. Polygamy is on its last legs as Shrimati Sucheta Kripalani pointed out. If there is any polygamy it is among the so-called fashionable people; you will see it nowhere else. Otherwise it has died out. Nobody has said a word against it. What was fought against was the introduction of this system of divorce. And I do maintain that uptil now, neither the Law Minister nor the Prime Minister nor anybody has given an answer to one point that we made. That point still remains unanswered. And the point was this. When you have provided for it in the Special Marriage Act, when you have made provision for sacramental marriages to be registered, why bring in this divorce here? That point has not yet been answered.

1 P.M.

And the third thing, is the darkest spot in this Bill. Posterity yet unborn will point their unerring finger at the Prime Minister and Mr. Pataskar, and say that you were making a mockery of a Hindi Code. This is not the way to enact a Hindu Code. If you have any faith, if you have courage of your conviction, if you honestly believe that this is the way to rescue all oppressed and down-trodden people or that this is the way to revolutionise our society, you ought to have enacted one common law for all Hindus and not this labyrinth and maze of diverse conflicting customs, some of them good, some bad, and some indifferent, some of them almost sanctioning promiscuous intercourse. All these should have been completely banned. But you have not the courage to do it.

I openly charge today. I charge the Prime Minister, I charge the Law Minister, I charge all those responsible for passing this Bill—you have violated your oath. You have taken the oath of allegiance to the Constitution of India. If you have really respect for the Constitution of India you will not have enacted a Hindu Marriage Code, but you ought to have enacted

an Indian Marriage Code. If you had respect and reverence for the Constitution of India, if you were true to your oath, you ought to have enacted an Indian Divorce Code, not a Hindu Divorce Code. But you have not got the courage.

On the first day, when I opened the discussion after Mr. Pataskar sat down, I said that Hindu law has never been static. That is the great glory of India. Hinduism is religion which is based on synthesis, on absorption, on reconciliation; not on dissension, extermination or supression. Expansion through respect, through synthesis, through reconciliation, that has been its motto. And the caste system with its gradations has been the historical and organic evolution of that particular way of life. It respects different customs of different levels of culture. What I wanted to point out is this. Nobody has opposed intercaste marriage. Nobody has stood and fought against it. What we said was there are certain features which we are now introducing which are not good. And even if you think that the Directive Principle is not binding on you, even if you want to commit an outrage on the Directive Principle, you should have exterminated all these conflicting customs. *Akhand Hindusthan* is a great ideal, integrity of one common mother, integrity of one India from Kanya Kumari to Amarnath, from Badrinath to Rameswaram, one great ideal) आसिन्धु सिन्धु पर्यन्ता यस्य भारत-भूमिका । from the Himalayas to the feet of Mother India washed by the three seas, it is a great ideal namely to have the consolidation of the nation. If you want to have consolidation, codify on that basis. Do not have this jungle of diversities which will make no codification. To this no answer was given by the Prime Minister.

There is no question of disrespect for other people. I am as anxious as anybody for the upliftment of our Scheduled Caste brothers and sisters. I fought very hard to make the Untouchability Bill a successful one. Both in the Joint Committee and here I made a suggestion which was not accepted. The suggestion was that an all-party Vigilance Commitee should be appointed. And one of the biggest Congress papers in Delhi paid a tribute to that suggestion.

You are really deflecting from the purpose. You are not carrying out the real objective.

Dr. Radhabinod Pal who is a great jurist, thinker, sociologist has said as President of the All India Convention on Hindu Code:

> "The members of the Hindu community are entitled not to be treated as mere irresponsible actors playing an imposed part in a play which they do not understand or need not try to understand. The measures suggested through the Hindu Code are generally felt to be of regrees and in defilement of Hindu ideals."

Is there anybody who can contradict this observation of the greatest jurist of India, of the man who has placed India on the juridical map of the world? You cannot. You may try to cloud the issue by raising irrelevant topics and discussions, but you cannot really contradict this remark of Dr. Radhabinod Pal. Dr. Radhabinod Pal is a man who is worshipped in Japan. A friend who came back from Japan told me: you go to the remotest village in Japan: when they ask you "who are you, which country are you coming from?" and you tell them you are coming from India, they at once ask "is that the country of Dr. Pal?" His name is worshipped in Japan because of that judgement in Marshal Tojo's trial. What that thoughtful jurist has said demands your attention.

There was no necessity for you to commit an outrage on the sentiments and susceptibilities of millions of people who honestly believe in sacramental marriage and in the indissolubility and the inviolability of that marriage, in the sanctity of that martial tie. You can easily convert the marriage into civil marriage and apply the provisions of the Special Marriage Act, where

[Shri N. C. Chatterjee]

people wanted it. To that no answer has been given. That is the great trouble.

I must admire the way my friend Shri Pataskar has fought and has steered this Bill through. He will go down in history as the author of this Bill, which will be known as Hari Smriti. That name was given by a very great man—I will not name him. He said if the Bill is passed my friend will be known as the author of Hari Smriti. But even manu Smriti can be changed, even Yajnavalkya Smriti can be changed, but Hari Smriti is so inviolate, so sacrosanct, so perfect that not one word can be changed in it (*Shri U. M. Trivedi*: Not one comma even), not even a comma.. And even the suggestion of Shrimati Sucheta Kripalani for dropping that provision about alimony for the husband was not accepted and even that provision was not changed. That is amazing.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*].

My friend thumped the table yesterday and proclaimed "it is a slander to say that my mind is closed". I am sorry, I do not know whether his mind is closed or not, but his ears are plugged, his hands are paralysed. We initiated four hundred and seventeen amendments. He turned down each and every one of them. He is worse than Manu. He is more reactionary than Yajnavalkya. If there is any mind petrified, it is the Pataskar mind. Not one amendment, moved by me or by yourself, Sir, or by so many of the Congress friends and eloquently pleaded for, not one of them was accepted.

I hope that this Bill will essentially remain a dead-letter. I find it has created dissensions even on the floor of the House. The House is divided. Acharya Kripalani and another ex-President of the Congress voted with me on the divorce clause. And Mrs. Kripalani went to the other side. It has divided husband and wife. It has divided the House. I hope and pray it will not divide homes and will not disrupt family life.

Mr. Chairman: Shri Kamath. I am giving an opportunity to the hon. Member as he has come for the first time after the last election. But I would request him to be brief because we have to close at a quarter to two.

Shri H. V. Kamath: I will take just a minute and a half.

Mr. Chairman: Because there are many other Members anxious to speak.

Shri H. V. Kamath: I have one brief observation to make. The Prime Minister, who is unfortunately not in his seat, was carried away by the vehemence of his feeling and emotion. And in his speech he made the remark that the spirit of India is represented by the women of India and not by the men. Apart from the fact that it is a serious reflection upon all our prophets and leaders, from Krishna and Buddha to Mahatma Gandhi and Netaji Subhas Chandra Bose, I am sure the Prime Minister agrees that he himself is included in the category of men, unless he claims to be a super-man. I am sorry he made such a remark in this House, and I hope he will take the earliest opportunity to correct himself.

श्री पी० एन० राजभोज (शोलापुर–रक्षित–अनुसूचित जातियां) : मुझे यह जान कर संतोष होता है और मैं समझता हूं कि यहां पर हमारे भाई श्री चैटर्जी और श्री देशपांडे जी ने जो कुछ इस बिल के बारे में कहा है उस के अनुसार उन को उच्च वर्ण के ऊपर विश्वास नहीं है । एक बात तो बहुत साफ है कि देश में ८० फ़ी सदी लोगों में विवाह विच्छेद जारी है । जो जातियां अपने को उच्च वर्ण का मानती हैं उन में तलाक की पद्धति नहीं है । अब जब उन लोगों में यह प्रथा गवर्नमेंट चलाने लगी है तो उन को गुस्सा आता है । मेरी समझ में

नहीं आता कि जब ८० फी सदी लोगों में इस प्रथा के होने से हिन्दू समाज गिर नहीं पड़ा तो बाकी लोगों में इस प्रथा को चला देने से हिन्दू धर्म और हिन्दू समाज का नुकसान कैसे हो जायेगा, यह बात मैं श्री चैटर्जी से पूछना चाहता हूं । यह एक अजीब बात है कि हिन्दू धर्म और हिन्दू समाज की रक्षा २० फ़ी सदी लोगों के ऊपर निर्भर करती है जैसा कि श्री चैटर्जी, श्री देशपांडे जी और नन्द लाल शर्मा जी कहते हैं । मैं उनसे पूछना चाहता हूं कि वह ऐसा क्यों समझते हैं जब कि बाकी लोगों में तलाक की प्रथा के होते हुए भी हिन्दू समाज और धर्म शास्त्र चलता रहा है ।

उच्च वर्ण के लोगों में अपने लिये जो उच्च भावना है वह ज़रा उन को छोड़नी चाहिये क्योंकि जब तक उच्च भावना वह अपने दिल से नहीं छोड़ते तब तक हमारे देश का भल नहीं हो सकता है । इस अधिकार को बहुत ही कम लोग इस्तेमाल करते हैं, हमारे समाज में स्त्रियों को इतनी स्वतंत्रता मिली हुई है, तब भी स्त्रियां कभी इस का उपभोग नहीं करतीं । इसी से सारी बात स्पष्ट हो जाती है ।

चैटर्जी साहब ने अपने भाषण में कहा कि यह अधिकार शूद्रों को ही है । यह बिल्कुल गलत है । हमारे प्रान्त में, महाराष्ट्र में वह अधिकार मराठा जैसी जातियों में भी मौजूद है, और इस जाति की संख्या करीब ६० फ़ी सदी है ।

मेरा कहना है कि आप कृपा करके अपनी नैतिक कल्पना हमारे समाज के बारे में न लगाइये । आप नीति की बातें करते हैं । नीति के सिद्धान्त पेश क ते हैं, लेकिन जो बहुजन समाज है वह नीति का आचरण करता है । इन आचरणों में कस्टम्स यानी रीति रिवाज का बहुत बड़ा हिस्सा होता है । हमारी जाति में पंचायत का राज्य अभी तक चलता है, जो हमारी पिछड़ी हुई जातियां हैं उनमें पंचायत का रिवाज कुछ कम होता है, यह आप लोग जानत हैं । इसीलिये पंचायत बहुत कोशिश करती है कि रूढ़ि व्यवहार या रीति के अनुसार व्यक्ति का आचरण हो । मेरा कहना है कि जो रूढ़ि, रीति और रिवाज हों उन को कायम रख कर ही इस बिल पर अमल किया जाय ।

दूसरी बात मनुस्मृति के बारे में तथा शास्त्रों के बारे में कही जाती है, लेकिन भूतकाल में भले ही मनुस्मृति से हमारे देश का कुछ भला हुआ हो, लेकिन आज मनुस्मृति का नाम लेने वाले लोगों से मैं पूछना चाहता हूं कि जब आज ज़माना बदल रहा है दुनियां बदल रही है तब अगर आप पुराने ख्याल के बने रहेंगे और मनुस्मृति की ही बात करते रहेंगे तो देश का भला कैसे होगा ? मनुस्मृतियां ऐसी चीजें हैं जिन में ब्राह्मणों को इतना ज्यादा अधिकार दिया गया कि उन्होंने हमेशा अछूतों को अपने नीचे दबाये रक्खा । मैं कहता हूं कि आज सिर्फ नारे लगाने से ही हमारे देश का भला नहीं होगा । इस लिये आज हम लोगों को शास्त्र के आधार की जरूरत नहीं है, जैसा कि हमारे मिनिस्टर साहब ने भी कई बार कहा है । मेरे ख्याल से तो जो हिन्दू कोड बिल बन रहा है उसी से हमारे देश और समाज का भला होने वाला है । इसी लिये मैं इस बिल का समर्थन करता हूं और कहता हूं कि इस को पास करना आवश्यक है ।

श्रीमती उमा नेहरू (जिला सीतापुर व जिला खेरी—पश्चिम) : चेयरमैन साहब मुझे खुशी है कि चन्द घंटों में इस बिल को हम बिदाई देंगे । जिस तरह से हम लड़की की शादी कर के उस को रुखसत करते वक्त दुआयें देते हैं उसी तरह से यहां पर बिदाई के व्याख्यान हो रहे हैं, हम खुशी से इस की यहां पर बिदाई कर रहे हैं, हमारी आंखों में खुशी के आंसू आते हैं, अफसोस के नहीं । सब से ज्यादा खुशी मुझे इस बात की है कि इस बिल से

[श्रीमती उमा नेहरू]

बेसिक पोजीशन ग्राफ वीमेन बदलने वाली है। इस से भी ज्यादा खुशी मुझे इस बात की है कि डाइवोर्स, जिस का नाम एक हव्वा सा हमारे लिये हो गया था, ग्रब इस का नाम इस हाउस में ग्रौर इस हाउस के बाहर भी लोगों को गवारा होगा।

मैं मुबारकबाद देती हूं मिनिस्टर साहब को कि उन्होंने हम से यह वादा किया है कि यह ऐलिमनी का मज़ाक जो हमारे भाई इस बिल में लाये हैं, उस मज़ाक को हटा कर वह इसमें सनजीदगी लायेंगे।

ग्राखिर में मैं मिनिस्टर साहब को मुबारकबाद देती हूं। ग्रौर मुझे पूरी ग्राशा है, कि जिस मेहनत से उन्होंने इस बिल के पास करने में हमें मदद दी है उसी मेहनत से कोशिश करेंगे कि ऐसे ग्रौर बिल समाज की उन्नति के लिये लावेंगे। मैं यह कहना चाहती हूं कि ग्रभी हमारे भाई कामत जी ने जिक्र किया था प्राइम मिनिस्टर का। प्राइम मिनिस्टर ने यह कहा था, जहां तक मैं ने उन को सुना, कि यहां पुरुषों से ज्यादा जिम्मेदारी से ग्रौरतों ने काम किये हैं। उन को इस का बड़ा ग़रूर है ग्रौर घमंड है। उन को ज्यादा रिस्पान्सिबुल यहां ग्रौरतें मालूम दीं। मैं प्राइम मिनिस्टर साहब के बल ग्रौर, जनाब चेयरमैन साहब, ग्राप के बल व ताकत की मशकूर हूं। सारी बातों के लिये जिन से हमें मदद मिली ग्रागे बढ़ने में, भारत में कभी यह मौका नहीं ग्राया कि स्त्री पुरुष में झगड़ा हो। जब कभी स्त्री का सवाल ग्राया, उस वक्त पुरुष ने उस की मदद की ग्रौर इसीलिये यहां पर सफरजेट मूवमेंट कभी नहीं हुग्रा।

इस के बाद मुझे थोड़ी सी बातें चैटर्जी साहब से भी कहनी हैं। उन्होंने ग्राज यहां पर इतनी मेहनत की, उन्होंने ग्राज हमारे मिनिस्टर साहब की तारीफें कीं, उन की पूरी तरह से पूजा भी की। लेकिन हम स्त्रियां भी चैटर्जी को नहीं भूल सकती हैं क्योंकि उन्होंने हमारे लिये बहुत सी बातें कहीं। उन्होंने तरह तरह की रुकावटें बताई कि हिन्दू समाज का क्या होगा, वह हर दफ़ा के लिये कहते थे कि चलते तो हो इस रास्ते पर लेकिन कहीं कोई दिक्कत न हो। मुझे पूरी ग्राशा है कि जिस तरह से चैटर्जी साहब ने हमें ग्रागे बढ़ाने के लिये रास्ते की दिक्कतें बताईं, उसी तरह से वह ग्रागे भी हमारी मदद करेंगे।

ज्यादा न कह कर मैं ग्राप सब को ग्रौर इस हाउस को मुबारकबाद देती हूं कि किस खूबसूरती से ग्रौर कितनी जल्दी हम ने इस बिल को बिदाई दी है।

Shri Satyendra Narayan Sinha (Gaya West): Mr. Chairman, I must compliment the Minister in the Ministry of Law for having very ably piloted this Bill; but, my regret is that he brought this measure before this House at a time when he was not in a position to accept any amendment sensible or reasonable; and this is my opinion, was wrong on his part. Otherwise, provisions for restitution of conjugal rights and such other meaningless provisions would not have found a place in this measure. I think the hon. Minister will have to bring forward another amending Bill in the not too distant future.

I join with the others in welcoming this measure which has received such wide support, opposition to it has been mainly based upon the fear that some of the provisions, particularly those relating to divorce and separation, would tend to disrupt the society and destroy the sacramental nature of the martial tie between the husband and the wife by reducing marriage to a mere contract. It is apprehended that the divorce courts would be flooded with such cases. Even the hon. lady Member from Bengal seemed to feel the same way as, in her opinion there is a huge accumulation of such cases piled up over years for want of facilities for divorce. However, I do not subscribe to that view, as I have very

great faith in the Indian women who, by their sacrifices and noble examples, have created a place of honour for themselves in the history of the world. They have played a glorious part in raising the moral standard of the family, society and the country and have even laid down their lives for their honour and dignity. How can you forget all these sacrifices to their credit? Suddenly they would not throw overboard the noble sentiments and lofty ideals which have so far informed their conduct and behaviour! I have not the slightest doubt in my mind that Indian women would strive as much, if not more, as any protagonist of the *smritis* and *srutis* in preserving the sanctity of the home and maintaining peace, stability and progress of the family and the society. Our revered leader, Shri Purushottam Das Tandon also referred to these ideals yesterday in his speech and he said that the law must have these ideals in front of it and whenever we provide for certain aberration in society, that should not be taken as a norm of life. There could be no dispute with his view on this point.

This social measure is the need of the hour, and as our Prime Minister has just now said, it is of the highest importance inas much as it takes up the social challenge. We know that the society has been changing and our laws must reflect the changes of time and must be in consonance with the spirit of the times. We have also provided for monogamy, but I am sorry, I am not quite sure how this provision relating to monogamy is going to help those women who are victims of pre-Act polygamous marriages. I know of cases where persons in high positions in life have taken in second wives and have deserted their former wives. As we know, Indian women are averse to go to law courts. How would this avail them? I had a feeling that there should be some provision whereby even a third party, say a social worker, could move the machinery of the courts for securing redress...

Shri Dhulekar (Jhansi Distt.—South): By breaking the marriage tie?

Shri Satyendra Narayan Sinha: No, redress by securing at least maintenance grant. Probably my friend, Shri Dhulekar forgets that redress may be had even without breaking the marriage tie. He does not seem know that in many cases where a highly placed man has taken another wife and deserted his first wife he does not even give maintenance allowance to his former wife. I think there should be some provision in the Bill by which the machinery of the court could be moved to the advantage of such a woman.

I also agree with Shri Jangde that the provisions should have been made applicable to the 80 per cent of the population who enjoy the facilities of divorce.

In the end, I say that the operation of this Act will be watched with very great interest, and in some quarters with suspense, but I do hope that the fears and apprehensions that the Hindu society will disintegrate and degenerate will prove false and all the traditions and ideals which have endured so far will continue to hold their own against any inroad of Western ideas. With these words I support the Bill.

Shri Lakshmayya (Anantapur): Thank you very much for the opportunity given to me to speak at least on the third reading of the Bill. While I welcome the Bill and support it, I want to congratulate at the outset the hon. Law Minister for having piloted the Bill so successfully, because it is a very huge and hard task.

The next thing that I want to submit is that the Bill consists of 30 clauses. I was not totally opposed to the divorce clause, but I had moved two amendments to sections 13 and 14. You are aware, divorce is a disgraceful thing. Though 80 per cent of the people in the country, are following a system of divorce on custom and usage. I do not mind it. But it is placed on statute-book now and it will be an act here after. To my mind, it is repulsive. If you are particular

[Shri Lakshmayya]

about this clause you could have accepted my amendment. In my amendment, I moved that there should be no divorce after a period of 25 years from the date of solemnization of the marriage, which means that if the marriage takes place at the 20th year, there should be no divorce after the age of 45. For a woman, if she has led a married life for 25 years, is it fare and just to have divorce after the age of 45? Another provision should have been inserted in this measure whereby if the parties, wife and husband, have one or more children and have led conjugal life for a period of 15 years, there should not be a divorce. A third provision should have been inserted that in the absence of children, if the husband has reached the age of 50 and the wife 45, there should be no divorce. But, the Law Minister, unfortunately did not consider them.

Sir, the marriage itself is sacramental in character. It is not only a union of two creatures but a union of two spirits. Marriage with a good woman is really a harbour in a tempest and a bad woman is a tempest in a harbour. It is bloom and blight of man's happiness. The institution of the marriage keeps the moral world in being and answers it from its untimely dissolution. As our hon. Prime Minister said, our women have shown forbearance and sacrifice all these years and they are responsible for the glory of our country. I do not say that our women will degrade themselves, but I think that the divorce clause has been introduced unnecessarily.

My next submission on this occasion is that monogamy is a high ideal, and if monogamy had been observed strictly, there is absolutely no necessity for divorce. The hon. Law Minister could have waited for five or six years and if the results were not good, he could have introduced the divorce clause later. Now that it has been introduced and the Bill is going to be passed, into an Act I have to congratulate him once again for having piloted the Bill successfully. I would have been happier if the Hindu Succession Bill had been passed prior to this. but I do not know why he was so anxious that this Bill should be passed first. Our women are placed in high status from the *vedic* period. The girls are regarded as goddesses, married women are *dharma pathnis* and old women are worshipped by everyone. When the women are enjoying this high status holding very high position, I do not know why they want equal rights with men. Do they want to degrade themselves? Do they want to come down to our level? I really fail to understand their desire and mentality, which is really ignoble. I would have appreciated if they had wished, and demanded that the men should come up to their level. One hon. lady Member said "We are Sitas and Savitris; but you are not Ramas" and you are *rakshasas*. I appreciate her. Does it mean that they should be *rakshasis* along with us and become bad like men? If they had insisted that we should lift ourselves to the level of Rama, I would have really felt happy. Instead of that, they wanted lower plane; and they wanted divorce provision. I feel sorry for that. Anyhow, I want that our country should realize the richness and responsibilities of our ancient heritage, and try to reinstate it so that it should become once again the mother of the world's civilization.

Shrimati Sushama Sen (Bhagalpur South): Sir, the women of our country will be grateful to this Parliament for having passed this piece of social legislation......

Shri V. G. Deshpande: Question.

Shrimati Sushama Sen: It may not be a perfect legislation. No legislation is perfect in the beginning. Perhaps by amendments it will be made quite perfect. We are also grateful for the kind words which our Prime Minister has said about the women of India. I am sure the women of our country will justify what he had said in the

forward march, and they will try to keep up the high ideals which our Indian women had always before them. I am sure they will not be failing; because of some clauses which have been put in this Bill, and of which some of our friends seem to be very afraid of them. I am sure Indian women can take care of themselves and they will protect their own rights and at the same time they will keep the dignity and prestige for which they are known all over the world. True, as the Prime Minister said, it is not right for us to criticise foreigners and foreign women especially when we do not know the real conditions. It is not that our Indian women will copy whatever is foreign. It is not right or proper to cast these aspersions on the Indian women. because they have their own heritage; they have their own culture and their own high ideals and I am sure that they will stick to them. With these few words I congratulate the hon. Law Minister for having piloted this measure so ably.

श्रीमती शिवराजवती नेहरू (जिला लखनऊ—मध्य) : सभापति महोदय, आज मुझे इस बात को देख कर बड़ी खुशी हो रही है कि एक बहुत ही उपयोगी बिल इस सभा में पास हो रहा है । यह एक उपयोगी बिल है, इस से किसी को इन्कार नहीं हो सकता । कल श्री टंडन जी ने यह कहा कि समय समय पर धर्म बदलता रहा है, जैसी परिस्थितियां होती हैं उन के मुताबिक धर्म भी बदलता रहा है और यह है भी ठीक क्योंकि हमारे धर्म में हर बात बुद्धि और कामनसेंस पर निर्भर करती है । फिर भी उन्होंने यह कहा कि जो धर्म की बुनियादी बातें हैं, जो इसके बुनियादी उसूल हैं, उन को हमें छेड़ना नहीं चाहिये और जो हमारे इतने बड़े ऊंचे आदर्श हैं, जैसे कि सीता और सावित्री ने हमारे सामने रखे हैं, उन को हमें मिटाना नहीं चाहिये । उनका कहना है कि पतिव्रत की सी प्रथा आज संसार के किसी दूसरे देश में नहीं पाई जाती। यह बात मेरी समझ में नहीं आई । मैं माननीय टंडन जी से बहुत ही अदब के साथ पूछना चाहती हूं जब हमारा इतना अद्भुत व विचित्र देश है, जहां पर तरह तरह के आदर्श हैं, प्रथाएं हैं, जहां पर पतिव्रत धर्म का आदर्श है, जहां पर सती होने का आदर्श था, जहां पर बाल-विवाह करने की प्रथा थी, तो क्या ये सब बातें बाकी संसार में भी पाई जाती हैं ? मैं पूछती हूं जब हम ने अपने देश से सती की प्रथा को हटा दिया, जब हमने बाल-विवाह करने पर प्रतिबन्ध लगा दिया तो उस समय से लेकर तो उससे हमारे देशों की क्या अवनति हुई है ? और जिनके देशों में ये प्रथाएं नहीं हैं, क्या वे हम से अधिक सभ्य और उन्नतिशील नहीं हैं ? इन खराब रसमों को हटा कर मैं तो कहूंगी देश को फायदा ही हुआ है और हम ऊंचे उठे हैं । इसलिये यह कहना कि जो आज देश में प्रथायें चल रही हैं उन को न बदला जाये मेरे विचार में ठीक नहीं होगा । स्त्रियां इस बात से सहमत नहीं हैं । मैं मानती हूं कि आज भी कुछ लोग ऐसे हैं जो इस का विरोध करते हैं और इन विरोध करने वालों में स्त्रियां भी हैं । मैं समझती हूं कि इस का विरोध स्त्रियों की तरफ से इस लिये किया जा रहा है क्योंकि वे आदमियों पर आश्रित हैं और उनके विचारों पर चलने को बाध्य है ।

मैं आपको अमरीका की मिसाल देना चाहती हूं । अमरीका में जब गुलामी की प्रथा को समाप्त करने का प्रश्न उठा उस वक्त वहां पर इस का घोर विरोध किया गया । वहां पर यह गुलामी की प्रथा बहुत पुराने जमाने से चली आ रही थी और वे लोग गुलाम ही रहना पसन्द करते थे । अमरीका के लोग जो अपने देश का और संसार का भला चाहते थे और अमरीका को खुशहाली की तरफ ले जाना चाहते थे उन्होंने इस विरोध के बावजूद इस प्रथा को समाप्त कर दिया । इसका जो नतीजा हुआ वह आज हमारे सामने है ।

[श्रीमती शिवराजवती नेहरू]

अमरीका ने जितनी आज उन्नति की है, जितना प्रभावशाली वह आज हो गया है वह इसी का नतीजा है। इसी तरह से आज हमारे देश में जो इस बिल का विरोध किया जा रहा है वह भी पुरानी प्रथाओं की बिना पर किया जा रहा है और जब इस बिल को पास हुये कुछ समय व्यतीत हो जायेगा तो पता लगेगा कि हमने जो कुछ किया वह ठीक ही किया।

यहां पर सीता और सावित्री की मिसालें दी गई हैं टंडन जी ने कहा हमें सीता के पतिव्रत को देखना चाहिये। मैं उन से पूछना चाहती हूं कि जब सीता ऐसी पतिव्रता स्त्री थी तो रामचन्द्र जी ने उन के साथ कैसा सलूक किया। उस वक्त यह कहा गया था कि वे इस के सम्बन्ध में भी बतायेंगे लेकिन अभी तक कुछ भी बताया नहीं गया............

श्री के० आर० शर्मा (जिला मेरठ—पश्चिम) : रामायण पढ़िये।

श्री पी० एन० राजभोज : पुरानी बातें छोड़ दीजिये।

श्रीमती शिवराजवती नेहरू : अगर हमारे भाई चाहते हैं कि स्त्रियों को सीता और सावित्री बनना चाहिये तो मैं कहती हूं कि उन को भी पुरानी भावनायें त्याग देनी चाहियें। मैं स्त्रियों के बारे में कह सकती हूं कि वे अब भी सीता और सावित्री बनने को तैयार हैं और उन के दिखाये हुये मार्ग पर चल रही हैं लेकिन आप का भी फर्ज है कि आप उनको सन्तुष्ट करें। आपको यह अधिकार नहीं होना चाहिये कि आप जो चाहें करें।

(Interruption)

Mr. Chairman: I think the hon. lady Member has finished. She need not speak any further if the hon. Member has already finished.

Shrimati Shivrajvati Nehru: I have not yet finished. I want only two minutes.

यहां पर जो यह कहा जाता है कि जो प्रथायें पुराने जमाने से चली आ रही हैं उन को तोड़ना नहीं चाहिये तो मैं पूछना चाहती हूं कि क्या स्त्रियां ही बलिदान का बकरा हैं जिनको धर्म और सच्चे प्रेम की वेदी पर चढ़ाया जाय ? क्या पुरुषों के लिये हमारे धर्म में वफादारी व सच्चे प्रेम का निषेध है ? तो कौन सा ऐसा कारण है जिस की बिना पर कि स्त्रियों को सैक्रिफाइस करने पर मजबूर किया जा रहा है और पुरुषों को इस से छूट दी जाती है ?

यहां पर यह भी कहा जाता है कि स्त्रियां बलहीन हैं, अबला हैं और ये कुछ कर नहीं सकेंगी। इन को फिर सहायता के लिये पुरुष के पास ही जाना पड़ेगा। इसलिये स्त्रियों को समान हक देने से भी कोई लाभ नहीं होगा। मैं इन लोगों से पूछती हूं कि जब हिन्दुस्तान में स्वतंत्रता संग्राम लड़ा जा रहा था, तो क्या स्त्रियां आदमियों के साथ साथ अपने देश को स्वतंत्र कराने के लिये नहीं लड़ी थीं? उस वक्त कहां से इन में इतना बल आ गया था? हमारे सामने सावित्री और यमराज की मिसाल मौजूद है। यह भी कहा गया है कि कोर्ट में जब कसों की सुनवाई होगी तो उस वक्त भी स्त्री को पुरुष की सहायता लेनी होगी। इसका भी मेरा यही जवाब है कि स्त्रियां इस के काबिल भी हैं। उन में इतनी ताकत है कि वे अपने अधिकारों की आप रक्षा कर सकें।

एक बात यह भी कही गई है कि जब हम स्त्रियों को बराबर के अधिकार दे रहे हैं तो जैसे पुरुषों से गुजारा स्त्री को दिलाया जाता है वैसे ही स्त्री से पुरुष को भी गुजारा दिलाया जाना चाहिये। मैं आप से कहना चाहती हूं कि हमारी स्त्रियां इतनी कमजोर नहीं हैं............ *(Interruption)*.

Mr. Chairman: Order, order. There is no time for these private talks. I will request the hon. Member to resume her seat.

Shri M. S. Gurupadaswamy (Mysore): Sir, many good things have been said about marriage and many bad things have been said about it and in the last few days, much of dirty linen was washed on the floor of this House. This measure, though it has so many draw-backs, still deserves our support; it is in tune with the spirit of the day and in accordance with the new times and new changes that we are having. We have been bearing that the marriage institution is a sacred institution and that it should be respected and that it should be preserved. We also agree that the family is still a unit of society and not the individual. Some hon. lady Members said that there has been too much of *zulum* by men on women and that there has been too much of injustice and that women are passing through suffering. There are also others who said that there are women who also did not keep up to the expected standards in marriage. There are good men and bad men; good women and bad women in any society. We also see that among men there are fashionable men who act like Romeos who desire more than half a dozen Juliets and there are women...

Shri B. S. Murthy (Elura): Sir, he said half a dozen Juliets. Romeo had had no half a dozen Juliets.

Mr. Chairman: Order, order. There is only very short time and I call upon the Member to speak about relevant matters relating to the Bill, now that we are in the third reading stage and not to talk of ladies and gentlemen and Romeos and Juliets..

Shri Venkataraman: Not to misquote Shakespeare.

Mr. Chairman: Let him confine himself to the provisions of the Bill at the third reading stage.

Shri M. S. Gurupadaswamy: I would take about three or four minutes and finish.

This Bill has for its object monogamy, a very important ideal. Today society is slowly recognising the importance of monogamy, the efficacy of it and the virtue of it and I consider it very heinous to have more than one wife. I believe that one man should have only one wife and that is an ideal which will agree with our modern notions of family, as also our modern notions of marriage. I feel that monogamy should be rigorously followed. I believe that if this Act is worked properly, this ideal will be achieved.

I do not understand why clauses 9 and 10 are kept still. I said while speaking on these clauses that restitution of conjugal rights and the right to judicial separation are totally unnecessary. To me the restitution of conjugal rights is not only outmoded and primitive, it also does not agree with our modern notions of marriage. When the husband and wife do not like to love each other, they do not love each other and there is no meaning in bringing about restitution.

Shri Kasliwal (Kotah and Jhalawar): Why did you forget to say that in the Special Marriage Act?

Shri M. S. Gurupadaswamy: Sir, you were pleased to say that in certain cases restitution of conjugal rights is necessary. You pointed out the case of a girl who is restrained with her parents. There may be certain cases of such a nature but those cases are very few and far between. They are not very many to warrant this general provision. I consider also that clause providing or judicial separation is far from progressive and this works as a dead weight on the progressive measure. So, I feel these sections, the restitution of conugal rights and the right to judicial separation should have been deleted.

Lastly, I say that divorce is very necessary when we accept the principle of monogamy. Shri Chatterjee said that he is against divorce. When we say that there should be monogamy, men should not marry more than one wife, we must make some provision for unhappy marriages. We cannot regard marriage as divine, religious, indissoluble or inviolable. Before we make the marriages divine, let us make them human. If you want to achieve monogamy, and if you want to make it a

[Shri M. S. Gurupadaswamy]

success, then you must find some outlet for unhappy marriages. Couples who do not find happiness in their lives should be given a chance to separate themselves. I say divorce is very necessary and I believe that this will not in any way lead to any large number of divorces and our women are very respectable and will not declare any war of independence against their men. I am sure, this Bill, after its passage, will work well in our society.

Mr. Chairman: Shri Venkataraman.

Pandit K. C. Sharma: One minute, Sir.

Several Hon. Members: *rose.*—

Mr. Chairman: The difficulty is this. I propose to call the hon. Minister at about 7 or 8 minutes to 2. But, I have already called Shri Venkataraman and then no time will be left. I wanted to give each Member who have stood up two or three minutes but I am very sorry I am unable to do so in view of the shortness of time.

Shri Venkataraman: Mr. Chairman, the hon. Member, Mr. Chatterjee has a habit of flinging speeches at the House and going away and that is why he said he did not get any reply either from the Government or from any of the supporters of the Bill or the complaint that while you have the Special Marriage Act, why you want to have a new Hindu Code. Mr. Chatterjee knows and you know very well that the Special Marriages Act imposes certain liabilities in respect of persons who marry under the provisions of that Act. It imposes the condition that if you marry under that Act you will have to be bound by the Law of Succession provided therein. Is it the contention of Mr. Chatterjee that unless you want to go away from the Hindu Law of Succession and have recourse only to the Indian Law of Succession as in the Indian Succession Act, you should not have any divorce? Whot is the connection between succession and divorce? Either you agree that there is a case for granting divorce or you do not. I can understand the argument that Hindu women shall not have divorce at all. But, to say that only if you elect to be governed by the Indian Succession Act you will be allowed to have divorce is to impose a condition unknown in any social legislation. Therefore, the answer has been given repeatedly but only Mr. Chatterjee has not waited to hear it and he repeats the charge again.

The second charge that is levelled is that it is not a uniform code. The Christians in this country have divorce; the Muslims in this country have divorce; some sections of the Hindu community have divorce; certain other sections of the Hindu community have not had the right of divorce so far. We are providing under this law the right to divorce for that section of the community. Are we not trying to bring about uniformity?

Pandit K. C. Sharma: Certainly.

Shri Venkataraman: How else is uniformity to be brought about? You bring the various sections of society to a level before you bring about a uniform law to govern all the sections of society. Now, we have several sections of society. Certain sections of the society have the right of divorce and certain other sections have not got that right. We are trying to bring them up to that level so that they would have the right of divorce along with the other sections which have that right. Therefore, even that charge that it is not a uniform code is not sustained.

The third thing he said was about the Kinsey Report. I have had occasion to see it in the United States itself. Sir, with all the pretensions that this report makes......

An. Hon. Member: You saw it!

Shri Venkataraman: I have read it.

With all the pretensions that this report makes with regard to the investigation that it has conducted into

statistics and all that, I consider it a piece of pornographic literature which will have a very wide sale throughout the world. That is all its merit. To say that pre-adolescent misdemeanour is prevalent to a large extent in America because of loose divorce law is not found in that report. I can say that without fear of being contradicted that the report does not say that it is because of the loose laws relating to divorce that the morality there is so low. On the contrary, they go about saying these are the conditions. They do not find the reason for it and they give various instances and so on (*Interruption*).

My point is this. The granting of divorce is not one of the reasons for pre-adolescent misdemeanour, and to say that because you give the right of divorce to Hindus under this Bill you will immediately transform this country into a state of wild life and unrestrained promiscuity is not at all just and justified.

Sir, I congratulate the Minister for having brought this Bill and put it through. In fact, very many Ministers of Law have had a chance to put it through, but it has been the good fortune of Shri Pataskar to have the credit of putting it through during his term of office.

Pandit K. C. Sharma: Mr. Chairman, I thank you for giving me this opportunity. After I spoke on this Bill the other day, many friends of mine had some hard words to say about it, for they thought that I said something which I ought not to have said. I am therefore glad for having got this opportunity to explain my position.

Sir, the future of marriage is to be decided by what are called positivism of natural sciences, socialistic ideas and socialist pattern, of urbanity of society, universal education, independence of livelihood and ways and means availabie to the women for independent existence liberalising effect of modern thought and all the environmental influences. The old things had their value in their own times. Now, in this nuclear age, what was good in those old good days, does not hold good. It is not that I do not respect the past: I do But the past has given birth to the present times and has gone. It cannot be revived. If anybody dreams of reviving it, he refuses to face facts of the present and visualizes the future and is not a manly man.

One must have the vision of the future; one must have the courage to face the present, to build it. With these words, I beg to submit again that what would be the pattern and structure of society in future will depend upon the potency of appeal of new idealogies and new ideas, new environment and I hope I will not be far wrong in saying that the entire structure of society might be changed and an entirely new society, with new ideologies and new structure, may come ino existence.

Several Hon. Members *rose*.—

Mr. Chairman: We have to finish this Bill by 2 o'clock.

Pandit S. C. Mishra (Monghyr-North East): I will finish in two minutes.

Mr. Chairman: Every hon. Member can say the same thing. How can the Chair discriminate when so many of them have simultaneously stood up? I am sorry I cannot allow the hon. Member.

Pandit S. C. Mishra: Please hear at least what has not been heard. The hon. Minister himself will permit me one minute. I say I will not take more than one minute.

Mr. Chairman: I am sorry I cannot agree. Then, everyone would want one minute. He may sit down. I find that the hon. Member goes on speaking; I am sorry I cannot allow him.

Pandit S. C. Mishra: One sentence more is not going to take much time of the House.

Mr. Chairman: I have asked the hon. Member to kindly sit down. Nothing can be finished in this manner.

Pandit S. C. Mishra: With your permission.

Mr. Chairman: I have not given him permission. The hon. Member is speaking on simultaneously with the chair. The proceedings of the House cannot be conducted in this manner.

Pandit S. C. Mishra: Then, I would not pursue Sir.

Shri Pataskar: I am very thankful to the hon. Members of this House for having debated this matter in as cool a manner as it was possible under the circumstances. I have very little to add, except to say that unfortunately only a few Members did not, in the end, or could not reconcile themselves to what is contained in this Bill. I first thought that this may be due to political considerations. But when I heard my esteemed friend Shri Chatterjee yesterday narrating the case of his aunt, who was like a mother to him, I was also moved. But his reactions were entirely different. If I were in his place, I would have thought that what my mother said—if she was my mother—was something which she should tell me, that I must try to change that kind of social order in which such a thing could happen. Unfortunately, it had the contrary effect on my learned friend. He spoke as if he was partly prepared to go back to the days when *sati* was allowed, though he did not justify it. Therefore, our mental outlook itself is different. I am now convinced that whatever I might say, if his mother or his aunt, failed to create the right approach to the question, cannot ever change his mind. I agree with my hon. friend because it moved me also, but on any other normal mind it would have produced a different effect.

Shri Chatterjee says that I have a closed mind. If there could be a closed mind, it could be no other mind except the one which is not moved even by an incident of this nature. Therefore, I have given up the attempt; otherwise I would have appealed to him to cooperate with us in implementing this Bil.

Sir, very serious charges were levelled against the way in which we proceed with this Bill. One of them was that I did not accept any of the amendments which were moved by the different sides. I can now understand that those who did not want this measure, or had unsuccessfully tried to prevent a measure of this type being put on the Statute Book can raise all these objections. But practical considerations show that we have today done the right thing. What is the good of protracting the legislation for all time to come? Has not enough time elapsed? Naturally, those who do not want anything to be done would always go on raising objections of this type, trying to pour ridicule on other people which could better have been avoided. I have already pointed out to the great Leader of the Opposition that I do not aspire to be a Manu. But, no, his mind cannot get out of Manu and Yagnavalkya and therefore he still persists in saying those things which I would leave rather to be judged by future generations. I would not, therefore, try to refute his arguments for I believe that a convinced mind which could not be moved by its own aunt could never be moved by anything I would say.

Barring a few exceptions, I am glad that the general level of debate on this matter was very high. I was very pleased to find that there was a large measure of support to the principles underlying this Bill.

Shri S. S. More (Kolhapur *cum* Satara—Reserved—Scheduled Castes): Overwhelming.

2 P.M.

Shri Pataskar: No doubt certain hon. Members pointed out that this is not a perfect piece of legislation and contain lacuna. Let me remind them that laws if they are not to be static can never be perfect. I am sure that this is not going to stand with me. I do not want a *Hari smriti*; I do not want to be a *smritikar*. Wherever there is a mistake, anybody who comes after me should change it and bring

it into conformity with the demand of the times and the necessities of the situation. This is a law passed in modern times, which is capable of being adjusted as the circumstances require. I know, in the course of the discussion, probably some Members, whether they belong to this group or that, on account of my impatience or some words that might have escaped me, may feel a sort of a grievance. I would appeal to them that they should forget them. If there have been some human frailties on my part, I deserve to be excused for the same.

I believe in one thing. Whatever people might say, whatever be the sentiments, I took interest in this matter not merely as a Law Minister. But, I honestly and sincerely believe that this was an overdue measure, which if passed into law will, in spite of all fears—they are natural— do good to us. After all, we have been accustomed to a mode of thinking in which these things were not there. I respect their sentiments. They may feel apprehensive. So far as I am concerned, I feel that all these apprehensions will be found to be misplaced, and ultimately, the future generations will judge whether by passing a measure of this type, we have really unified Hindu society. That is for history to say. With my limited knowledge of things that are happening in the world and the forces that are operating for social unity in our country I am convinced that this will serve a very useful purpose, and in course of time combine at any rate, not only those who call themselves Hindus, but also others. Unless we come together, I do not think there is any unity possible. It is an atempt in that direction, and I hope it will succeed.

Again, I thank even those hon. Members who may be nursing some grievance. I am very happy that this measure was discussed in a spirit of give and take. As I said on another occasion in the course of the debate on the Company Law Bill, it shows the genius of our people that we are capable in spite of differences, to adjust ourselves and come together, though there may be a few exceptions, in order that something may be achieved. From that point of view, the credit goes not to an individual or a few individuals, not to any party; I would give that credit to the general genius of our Indian people, who can always, in spite of differences, by mutual discussion, by co-operation, by adjustment, do all these things. It is because of that, that we have been able, though may be after a long time to pass a measure of this kind. I really personally thank all those hon. Members in every section, including those who had to say something against the Bill, for the way in which they helped me successfully to go through this measure and I am sure that, whatever they might have said, ultimately, they will pass it without a dissentient voice.

Mr. Chairman: The question is:

"That the Bill be passed."

Shri V. G. Deshpande: No.

An Hon. Member: Only one dissentient voice.

Shri V. G. Deshpande: There are many. The whole country is behind me.

Mr. Chairman: If the hon. Member wants any division, this is not the time for a division. I will take it at 3-30. If nobody wants a division, I will declare the result.

An Hon. Member: He has not demanded a division.

Mr. Chairman: The motion is carried. I declare that the Bill is passed.

The motion was adopted.

HINDU SUCCESSION BILL

The Minister in the Ministry of Law (Shri Pataskar): I beg to move:

"That this House concurs in the recommendation of Rajya Sabha

[Shri Pataskar]

that the House do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to intestate succession among Hindus made in the motion adopted by Rajya Sabha at its sitting held on the 25th March, 1955 and communicated to this House on the 28th March, 1955 and resolves that the following Members of Lok Sabha be nominated to serve on the said Joint Committee, namely; Shri Satyendra Narayan Sinha, Pandit Dwarka Nath Tiwary, Shrimati Tarkeshwari Sinha, Shrimati Uma Nehru, Shri Raghubir Dayal Mishra, Shri Bulaqi Ram Verma, Shri Birakisor Ray, Dr. Pasupati Mandal, Shrimati Jayashri Raiji, Choudhary Raghubir Singh, Shri C. R. Basappa, Shri Rayasam Seshagiri Rao, Shri M. Muthukrishnan, Shri Khub Chand Sodhia, Shri Vaijnath Mahodaya, Dr. Devrao Namdevrao Pathrikar Kamble, Shri Dev Kanta Borooah, Sardar Iqbal Singh, Shri Bheeka Bhai, Shri M. L. Dwivedi, Shri Radha Raman, Shri Shankar Shantaram More, Shrimati Sucheta Kripalani, Shrimati Renu Chakravartty, Shri S. V. L. Narasimham, Shri Vishnu Ghanashyam Deshpande, Shri Girraj Saran Singh, Shri K. A. Damodara Menon, Shri Choithram Partabrai Gidwani, and the Mover.

This House is aware that this Bill is a very important instalment of the last Hindu Code. We only just now passed the Hindu Marriage Bill, which was another important instalment of that Code. During the course of the debate on that Bill, a good deal of discussion has taken place with respect to the necessity of having a uniform Hindu Code.

The process of codifying and amending the Hindu Law regarding succession started in the year 1914. I will briefly mention the Acts which were passed from time to time by the different legislatures since 1914 with respect to succession amongst the Hindus. Though a consideration of the Hindu Code as such started in 1937, so far as the question of amending the law regarding succession to which I shall refer started in 1914.

The first legislative measure to lay down the law relating to some part of the Law of Succession regarding Hindus was the Hindu Transfers and Bequests Act of 1914. It was an Act of the Madras legislature which provided for the rights of Hindus to make bequests in the province of Madras excluding the city of Madras. The second Act was the Hindu Disposition of Property Act of 1916. It was an Act of the Central legislature which was enacted to remove certain disabilities in respect of the power of Hindus to bequest. The third was again, Hindu Transfer of Bequests (City of Madras) Act of 1921. It was an act of the Madras legislature which provided for the right of the Hindus in the city of Madras to make bequests. The fourth Act was the Hindu Removal of Disabilities Act of 1928. It was an Act of the Central legislature to amend the Hindu law relating to exclusion from inheritance of certain classes of heirs on the ground of physical defects. As you are aware, according to some case law, certain persons with some physical defects were held not to have the capacity to inherit. This Bill was brought at that time to remove those disqualifications.

The fifth was the Hindu Law of Inheritance (Amendment) Act, 1929. It was an Act of Central Legislature to alter the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate.

The sixth was the Hindu Gains of Learning Act, 1930. It was an Act of the Central Legislature and it provided for a uniform rule as to the rights of a member of a Hindu undivided family in property acquired by him by means of learning. This was an Act providing for exception in the case of a person belonging to Hindu joint family who has acquired some property by means of the education that he has received, and it was decided

it should not be treated as joint family property.

The seventh was the Hindu Women's Rights to Property Act, 1937. This was an Act of the Central Legislature and it amended the Hindu Law to give better rights to women; particularly widows in joint families. That again was a measure which wanted to give the widows the right to claim partition after the death of their husbands and so on. I will not go into the details of that.

[SHRI BARMAN *in the Chair*]

The first three Acts relate to the right of Hindus to make a bequest of their property. The fourth was for the purpose of removing certain anomalies regarding the inheritance of certain classes of heirs on the ground of physical defects. The fifth was for the purpose of altering the order in which certain heirs inherited to a Hindu male dying intestate. This can more or less be called the first attempt to give certain female relations like daughter and sister a preference or a priority in the order of inheritance as against certain distant male relations. The seventh gave better rights to women particularly widows in joint families. The sixth was necessitated by the changing fortunes of the joint family system. Thus, therefore, from 1914 to 1937, seven Acts were passed which were regarding:

(1) the right of bequest by a Hindu;

(2) the right of a Hindu widow to claim partition in a joint family; and

(3) the right of a member of a Hindu joint family to hold property acquired by him as a result of his learning to gains.

All these Acts thus affected not only joint family but also the right of women regarding inheritance. Of course in the circumstances which then existed these are all halting measures. But it clearly shows the trend in which legislation was moving and the direction it was following. It must be noted that the first attempt started with the introduction of legislative reforms in 1914 that in the conditions which existed between the years 1914 and 1930 there were difficulties in the way of further progress in the right direction. However, with the limited extension of the legislative franchise in 1935 this question gathered momentum.

The process of codifying the law of intestate succession among Hindus, or rather condifying the entire Hindu Law, has been before the Central Legislature ever since 1939. As Hon'ble Members are aware, Shri Akhil Chandra Dutta, a non-official member of the Central Legislative Assembly, first introduced a Bill in that Assembly to amend the Hindu Women's Rights to Property Act of 1937, so as to give rights of inheritance to daughters. This was done on the 18th of February 1939. A motion that that Bill should be circulated for the purpose of eliciting public opinion thereon was passed by the Central Legislative Assembly on the 15th September 1939. Shri Dutta then moved on the 22nd November 1940 that his Bill should be referred to a Select Committee. The then Government, at the time of that motion. gave an undertaking that Government would appoint a small committee of eminent Hindu lawyers to examine the whole question of succession under Hindu Law. It should be noted that at that time there were four other Bills introduced by private Members and pending in the Legislative Assembly: two of them were by Shri G. V. Deshmukh, one by Shri A. N. Chattopadhyaya and one by Shri N. V. Gadgil, the present member of our Parliament.

I am mentioning this in order to show how with the extension of franchise and the added powers under the Act of 1935, several private Members began to take interest in the subject and introduced Bills regarding this matter of inheritance among the Hindus.

[Shri Pataskar]

In pursuance of that undertaking, Government appointed a Committee, on the 25th January, 1941, with Sir B. N. Rau as the Chairman. That Committee recommended the codification of Hindu Law in gradual stages, beginning with the laws of intestate succession and marriage. In pursuance of this recommendation, the then Government introduced a Bill to amend and codify the Hindu Law relating to intestate succession in the Assembly in 1942. Government also introduced separately a Bill to codify the Hindu Law relating to marriages.

The Intestate Succession Bill was referred to a Joint Select Committee in 1943, which recommended that the Hindu Law Committee should be revived and encouraged to formulate the remaining parts of the Code. The Hindu Law Committee, which was reconstituted in view of this recommendation, submitted its report in 1944. This Committee came to be known popularly as the "Rau Committee." That Committee nearly after three years of deliberation presented a report with a draft Code. In pursuance of that report, a draft Hindu Code Bill was introduced in the Central Assembly in 1947. This was done by Shri J. N. Mandal who was then a Minister in the Central Government.

This Bill was referred to a Select Committee of the Constituent Assembly (Legislative) which presented its report in 1948. Some of the hon. Members of this House were Members of that Committee. Prolonged debates took place in the Constituent Assembly (Legislative) and the Provisional Parliament on the motion for taking the Bill as reported by the Select Committee into consideration. Outside Parliament, public opinion was also consulted in an informal conference held in 1950 under the Chairmanship of the then Law Minister, Dr. Ambedkar, and to this informal conference, persons representing different shades of opinion on the subject were invited. A special conference was also held in Trivandrum to consider how far persons governed by the special systems of law on the West Coast—Marumakkattayam and Aliyasantana laws—could be brought within the scope of the Code. Government also gave notice of exhaustive amendments to this Bill as amended by the Select Committee, as a result of these consultations. However, the Bill could not then be passed, when the Provisional Parliament was dissolved.

I might here say that this was due not so much to any indifference either on the part of the Government or any one else but due to the then prevailing circumstances. After the partition and its aftermath and the work of Constitution-making which had to be given topmost priority, it was not then possible to get through with the Hindu Code Bill which was introduced in the Assembly just prior to Partition. After the present Parliament was elected the matter was again taken up but it was thought that it would be better to split the Bill into certain parts and place each part separately before Parliament. We have just passed the Hindu Marriage Bill. The Hindu Minority and Guardianship Bill, another part of the Code, was referred to the Joint Committee of both Houses and after the Report of that Committee, that Bill has been passed by Rajya Sabha and I hope that that Bill will also be brought before this House and passed into law at the next session. Another important part of that Code, namely, this Bill to codify and amend the law relating to intestate succession amongst Hindus is being referred to a Joint Select Committee on the motion which I have moved. This Bill dealing with the law of intestate succession is a third and most important instalment of the Hindu Code. This Bill was first introduced in Rajya Sabha but prior to its introduction it was published in a Gazette of India Extraordinary dated the 26th May, 1954 with the leave of the Chairman of the Rajya Sabha. It was circulated for eliciting public opinion thereon by executive order. The

opinions from all States were called for and two printed papers of the opinions on the Bill as published have been circulated to hon. Members.

Of the 27 State Governments who were consulted in the matter, 12 (*viz.* Madras, Andhra, West Bengal, Orissa, Hyderabad, Tranvancore-Cochin, PEPSU, Himachal Pradesh, Vindhya Pradesh, Tripura, Kutch and the Andaman and Nicobar Islands) support the general principles underlying the Bill. Three State Governments have given qualified support to the Bill as follows:

(i) The Government of Bombay considers that a Hindu may be given an option to be governed either by this law or by the ordinary Hindu law.

(ii) The Government of Assam is for giving half a share to surviving unmarried daughters only.

(iii) The Government of Punjab suggests that the scope of the Bill may be confined to the enlargement of the list of heirs in the existing law so that daughters and their progeny may also become simultaneous heirs.

Ten State Governments, *viz.* U. P., Madhya Pradesh, Mysore, Madhya Bharat, Rajasthan, Saurashtra, Ajmer, Coorg, Delhi and Bhopal have not expressed any comments either way. The Government of Bihar, while agreeing with the principle underlying the Bill, consider that it may be postponed for the present.

An Hon. Member: Why?

Shri Pataskar: Only the Manipur Administration has opposed the Bill outright.

The Central Social Welfare Board, whose opinion was also solicited, has observed that, while the Bill marks a step forward both in conferring heritable capacity on several women and in dispensing with the traditional limitations on the power of a Hindu woman to hold and transmit property, the Bill gives less than what is rightfully due to the woman.

An examination of the opinions submitted to the State Governments by individuals and public bodies reveals that except for the extreme orthodox view which is opposed to any reform being made in Hindu law to suit the present day social and economic life of the Hindus, enlightened opinion is in favour of the general principles underlying the Bill.

Besides suggestions of a drafting nature, there are also opinions expressed regarding the share to be given to the female heirs, order of succession etc. These suggestions will of course receive the careful consideration of the Joint Committee and thereafter of Parliament when it takes up detailed consideration. In view of the general support to the principles of the Bill, it merits consideration by our House.

In the Bill as published, special provisions were made for persons governed by the matriarchal systems of law on the West Coast of India. After a careful consideration of the matter and the views of the Governments of Madras and Travancore-Cochin regarding the safeguards required for these people in the Bill, it was decided that they may be left out of the scope of the Bill for the present. In fact, the same has been done in the case of the Hindu Marriage Bill just passed by this House with respect to certain special rights of divorce that they possess. It may be observed that the Rau Committee also recommended the exclusion of these persons from the scope of the provisions relating to intestate succession in the Hindu Code prepared by it. As the laws of marriage, adoption, succession, etc., are all inter-related, it is difficult to foresee all the safeguards that will be required for these persons in each Bill until a complete picture of the Hindu Code emerges. But for the deletion of the special pro

[Shri Pataskar]

visions relating to these persons, the Bill as introduced in the Rajya Sabha is the same as the Bill which was published in the Gazette and circulated for opinion and now before this House.

In preparing the draft of this legislation, we have had the advantage of the original drafts of the Rau Committee, the revised version of the Select Committee, the discussions which took place both in Parliament and at the informal conference held under the then Law Minister, Dr. Ambedkar in 1950 and the Government amendments which were pending in the Provisional Parliament before its dissolution.

To a large extent, this Bill is based on the version of the corresponding portion of the Hindu Code as amended by the Select Committee of the Constituent Assembly (Legislative) but with one very important change, *viz.*, that joint family property which is governed by the Mitakshara rule of survivorship is taken out of the purview of the Bill altogether. Honourable members are aware that detailed consideration was given to this question by the Rau Committee and in their Report they pointed out that much of the sentiment which supports the Mitakshara joint family was due to a natural instinct of conservatism and to the respect felt for an ancient institution which has come down from remote antiquity. But both by judicial decision and legislative enactment, most of the characteristic features of the joint family have been done away with and apart from the fact that the Mitakshara joint family is a fast crumbling institution, the Rau Committee also pointed out the inequities which are caused at the present moment in certain cases by the operation of that law. For example, where a Mitakshara father dies leaving a daughter and a brother, his interest in the coparcenary property will go to the brother by survivorship and if he subsequently dies leaving a daughter, the interest will go to the brother's daughter, the original owner's own daughter being ousted. If the joint family is therefore to be preserved and if the daughter's right to a share is also to be recognised, it could only be done by giving the daughter a right by birth similar to that of a son or by giving the father a right to dispose of his coparcenary interest in the property by will or by some such device. Again, if the daughter is to have an absolute estate in the property which she gets from her father, even in a Mitakshara joint family the son should also get a similar estate.

To retain the Mitakshara joint family and at the same time put the daughter on the same footing as a son with respect to the right by birth, right of survivorship and the right to claim partition at any time, will be to provide for a joint family unknown to the law and unworkable in practice. The difficulties in the way are bound to be enormous. In the circumstances. hon'ble Members may well feel that the Rau Committee came to the only possible conclusion that hereafter there will be one form of succession to all kinds of property passing on intestacy and that the law need recognise only one form of joint family, namely the joint family known to the Dayabhaga system of law. In this matter, I would be willing to be guided by the wishes of the House. If the House decides in favour of the conclusions reached by the Rau Committee in this matter, with the addition of a clause or two in this Bill, that can be easily done. A decision of this matter, while considering the present Bill in my opinion is inevitable.

The other properties exempted from the scope of this Bill are properties succession to which is governed by the Succession Act, by reason of the marriage having taken place under the Special Marriage Act, properties succession to which is regulated by certain special systems of law in force in certain parts of Madras and Travancore-Cochin and properties which are by custom impartible. These do not require any elaboration.

The Bill does not also take away the existing right of a Hindu to bequeath by will his property which he is capable of so disposing (*see* clause 34).

With the above clarification, let me first take up the following main features of the Bill:

(1) The introduction of the daughter as a simultaneous heir along with the son, widow, etc.;

(2) The quantum of the share to be allotted to the daughter; and

(3) The abolition of what is commonly known as the "limited estate of a Hindu woman".

Let me first take the introduction of the daughter as a 'preferential heir' to succeed simultaneously along with the son, widow, etc. It is no longer possible to subscribe to the doctrine that women are incompetent to inherit. I have deliberately avoided using any Sanskrit words in order not to exasperate my learned friend, Shri N. C. Chatterjee. I do not want to quote from Manu or any other person, as I do not wish to enter into a controversy. The fundamental principle should be that no woman should be disqualified for succession merely by reason of sex. That is the only principle which ought to be valid. Once this disqualification is removed, then the only question which remains for consideration is what should be the share of a daughter in the property of her father. Even according to the *Smritis*—I am sorry—even in ancient times, the daughter was entitled to a quarter share in her father's property. It is a pity that custom had destroyed the efficacy of what was being done once. This Bill in introducing the daughter as a simultaneous heir is neither going against what was once done, nor going against contemporary modern systems of law which give a share to the daughter in the father's property. This is also in consonance with the principle of natural affection and love—and I think that should count far more than anything else. Those who apprehend that the introduction of the daughter will ultimately lead to disintegration of property should note that the power of a Hindu to make a will is not sought to be restricted in any way under the Bill. So also, clause 25 of the Bill seeks to apply the Partition Act in certain cases and, where any immovable property or any business devolves upon male and female heirs, that clause would enable the male heirs to compulsorily buy off the share of the female heirs.

Coming to the second topic, namely the quantum of the share to be given to the daughter in the intestate's property, the Rau Committee recommended that the daughter may be given half the share of a son. In their first draft they had proposed the same share, and the Select Committee which considered the first draft in 1943 endorsed this suggestion. When the whole Code came to be drafted by the Rau Committee, the half share was kept up. The Select Committee which sat on the revised Hindu Code in 1948, however, increased the share of the daughter so as to be equal to that of a son. When the revised Code was being considered by the provisional Parliament and the informal conference, the same questions were again brought up in various forms, and attempts were made to reduce the share of the daughter. For example, it was suggested that no share should be given to a married daughter. Another suggestion was that an unmarried daughter should alone get the half share, while a married daughter should be given a quarter share. Yet another suggestion was that an unmarried daughter alone should find a place in the first list of heirs and if she gets married during the lifetime of the father, she should go out of the compact series, and only succeed in the absence of other heirs in the compact series. In fact, certain amendments to this effect were before the Provincial Parliament when it was dissolved. It would be for this

[Shri Pataskar]

House now to decide whether the recommendation of the Rau Committee that the daughter should be given half a share should be adhered to or whether they could agree with the recommendation of the Select Committee on the former Bill in 1948.

In framing the table of preferential heirs, the test adopted by the Select Committee of 1948 has been adhered to, that is to say, a greater importance has been attached to propinquity and love and affection rather than merely to religious efficacy. An attempt has so been made to treat male heirs and female heirs as far as possible on the same footing. For example, under the existing law, only the son of a pre-deceased son, and the son of the pre-deceased son of a pre-deceased son, find a place in the compact series; grand-daughters do not find a place in the series at all. Under the present Bill, the daughter of a pre-deceased son or the daughter of a pre-deceased daughter find a place, and the inclusion is based on the doctrine of representation.

The third question is regarding the abolition of what is known as the 'limited estate' of a Hindu woman. The right of a woman to hold property has always been a subject of controversy. There is a weighty body of opinion which holds that the doctrine of the Hindu woman's 'limited estate' has no real foundation anywhere. It has also been described as the most prolific source of litigation in our courts. That is my opinion. It is a matter for serious consideration whether a doctrine of this kind should find a place in Hindu law at any rate, after the commencement of the Constitution. While on the one hand, the present Hindu law recognises the right of a woman to hold and dispose of her *stridhan* property, the same law finds her incompetent to deal with any other kind of property. This Bill seeks to put an end to this injustice and recognises that a woman shall have absolute right in the property she acquires. The Rau Committee also recommenled that the property, inherited or otherwise, acquired by a Hindu woman should be her absolute property. The Select Committee also came to the same conclusion.

The main argument advanced in favour of limiting the estate of women is that a majority of them are illiterate and that they are incapable of managing the property and are likely to be duped by designing relatives. Illiteracy is not in itself a proof of incompetence. For the matter of that, a vast number of our men are also illiterate. Even under the existing law, a daughter who inherits to her father in the State of Bombay gets in the property an absolute estate. What has been found to be good for a daughter in Bombay will, I think, be good enough for the rest of India; and similarly what has been found to be good for a daughter will also be found to be good for a widow or any other famale heir.

The Bill is only another step forward in dispensing with the traditional limitations of the power of a Hindu woman to hold and transmit property. The House may also note another significant factor in this connection. Some of the former Indian States like Baroda and Mysore had enacted legislation conferring better rights on women in this regard. In Mysore, a committee was appointed as early as 1929, and the report of that committee was accepted by the then Government of Mysore, and the Mysore Hindu Law Women's Rights Regulation was enacted in 1933. By 1937, Baroda had a consolidated Hindu code under which additional rights over property were conferred upon Hindu women. In Goa under Portuguese administration there is one common law of succession applicable to all citizens including Hindus, who form a very large majority of the population there. Hindu women like all other women in that territory are in enjoyment of full rights of succession and ownership for the last 200 years and more. It has not affected in any way the religion of Hindus there. If during these 200 years and more, it has constituted no

danger there, there is no justification for holding that the passing of this Bill will constitute any danger to anybody in the rest of India.

Let us now take up the main features of the several clauses in the Bill. Clauses 2 to 4 are a common feature of all Bills on Hindu law, *i.e.*, with regard to the scope etc. These are worded in conformity with the corresponding clauses in the Hindu Marriage Bill which has been passed just now.

In the definition of 'cognates' the distinctions between *matrubandhus* and *pitrubandhus* are done away with. In the definition of the word 'related' the rights of illegitimate children as regards succession to their mothers and to one another have been safeguarded. Clause 5 of the Bill excludes application to joint family property etc., about which I have already dilated in detail a few minutes back.

Clause 6 lays down the well-known principles which apply for regulating succession to movable and immovable property. Clause 7 seeks to do away with the present distinctions between a divided and an undivided son, between a married female heir and an unmarried female heir, between a poor female heir and a rich female heir, as being inconsistent with the general scheme of the Bill.

Then comes the chapter on interest succession to the property of males. Before 1937, the 'simultaneous heirs' of a male Hindu dying intestate consisted only of the son, the son of a predeceased son, and the son of a predeceased son of a pre-deceased son. The Hindu women's Rights to property Act, 1937, added to this list the widows of the first two as well as the widow of the intestate. Clause I of the preferential heirs in the Schedule now adds to the existing list of 'simultaneous heirs' the daughter, and further seeks as far as possible to treat the other grand-children of the intestate whose parents have pre-deceased the intestate, on the same footing as the son of a pre-deceased son, except in the former cases the share to be divided among them will be less. The widow or the widows together take one share; each surviving son takes one share; the heirs in the branch of each pre-deceased son take one share if there is a son and half a share in other cases; each surviving daughter takes half a share, and the heirs in the branch of each predeceased daughter take between them the share of such pre-deceased daughter.

After the heirs in class I in the Schedule, the property will devolve upon the heirs specified in class II. This class has been divided into nine categories in the order of preference, one category excluding the other, and the heirs mentioned in one category sharing equally among themselves. After these heirs in class I and class II come the agnates and cognates of the deceased within five degrees. The cognates inherit when there is no agnate.

With respect to the heirs other than those in class I, the Bill follows the scheme of the Select Committee on the Hindu Code, the heirs being arranged on a rational basis, and relatives who are far removed from the intestate, and persons who are not relatives at all like *acharya* and *shishya* being eliminated altogether. Further, certain persons have been grouped together for simultaneous succession like father and mother, brother and sister and son. The number of possible heirs of agnates and cognates is also narrowed down.

Next is the chapter on intestate succession to the property of females. The Rau Committee vested a Hindu woman with full rights over *stridhan* property and laid down certain rules of succession with respect to the same. The Select Committee incorporated the substance of these provisions under a separate chapter and provided that property acquired by a woman became her absolute property. Clause 16 follows the Select Committee's draft.

[Shri Pataskar]

and declares that whatever property is acquired by a Hindu woman after this law, shall be her absolute property. I have already dealt with this important feature of this Bill in detail.

Clause 17 of the Bill evolves a uniform scheme of succession to a woman's property, and clause 18 seeks to regulate the manner of distribution. Clause 19 contains a saving in respect of properties which a Hindu woman has at the time of the commencement of this law as a limited estate.

Clause 20 which relates to rules for hermits, etc., is in accordance with the existing law. When a person enters a religious order renouncing all worldly affairs, his action is tentamount to civil death under the existing law. But, if he acquires property subsequent to the renunciation it passes to his spiritual heirs.

Clause 21 lays down that heirs related by full blood shall be referred to heirs by half blood. Clause 22 regulates the mode of succession to two or more heirs. Clause 23 relates to the rights of a child in the womb and clause 24 relates to presumptive survivorship when two persons die in circumstances rendering it uncertain as to which survived the other. These are in accordance with the provisions of the existing law in the matter.

Clause 25 provides for the applicability of the Partition Act in certain cases. Where any immovable property or any business devolves upon male and female heirs, this clause would enable the male heirs, if they so desire, to compulsorily buy off the share of the female heirs.

Clauses 26 to 31 relate to disqualifications of heirs under certain circumstances.

Under the Hindu Law, blindness, deafness, dumbness want to any limb or organ, lunacy, idiocy, leprosy and other incurable diseases disqualified a person from inheriting; but the Hindu Inheritance (Removal of Disabilities) Act, 1928, declared that no person shall be excluded from inheritance on any of these grounds except if he was from birth a lunatic or an idiot. Clause 32 of the Bill seeks to remove all such disqualifications.

Clause 33 relates to escheat in the absence of any heir qualified to succeed, and clause 34 confirms the existing law that a Hindu may dispose of by testamentary disposition any property which he is capable of so disposing.

Sir, I have attempted briefly to indicate the main features of the several clauses in the Bill. The codification and unification of Hindu Law has been under active consideration of the legislators and the public in the country since the year 1939, and in 1941 a Committee was first appointed.

We have accepted, by passing just now—an hour back—the Hindu Marriage Bill which form part of the Hindu Code, not only the principle and necessity of having one uniform Code for the Hindus, but also the responsibility of passing the other parts of that Code without delay. That is how I look upon this matter. The very fact that we have passed that Bill shows that if we are to have a uniform Hindu Code, we must also go ahead and get the other measures passed. I need urge no further arguments at this stage in support of the necessity for a measure like this. In fact, the first Bill that led to the appointment of the Rau Committee was a Bill relating to the subject-matter of this Bill. I would appeal to all Members to consider the broad features of this Bill which I have already indicated, and pass this motion.

As already stated, attempts were made many times before for having uniform legislation on this matter. For various reasons they could not succeed. It is high time that this Parliament of a free independent and sovereign India should now complete

this task. By doing so, we will be taking a very important step in the direction of redeeming our pledge to strive to promote the welfare of the people by establishing a social order in which justice, social, economic and political, shall inform all the institutions of the mational life as laid down in our Constitution. I would appeal to Members of this House to consider this measure dispassionately. All over the rest of the world, women are entitled to inheritance with men. There is no limited estate to women, because she is a woman, anywhere else in the world.

There is no doubt that this is a measure which proposes to give Hindu women rights which they did not enjoy in this form for some time in the past. To them who have long suffered from various disabilities in the past, I would appeal not to dwelve into the past and revive bitter memories: that would serve no useful purpose. To my sisters I would further appeal not to look at this question only from the point of view of benefit to women. Men and women together form the society, and the approach to this question should be to find out what is in the best interests of the society as a whole. To those who have been enjoying some special privileges, I would like to point out that the days of such privileges are gone, and the longer you try to stick to them, the worse will it be for you and the Nation. Wisdom lies in taking note of the present and joining in the noble task of creating a strong, united and happy Indian Nation, just within itself to everyone of its citizens and just outside to all other Nations and peoples, serving as a beacon light of peace and contentment to mankind in the present stormy world.

I regard this as an attempt in that direction and just as charity must begin at home, justice must also begin with justice to the women of our country. With the same goodwill, mutual toleration and a spirit of accommodation which enabled us to pass the Hindu Marriage Bill, I am sure we will be able to achieve this important and long overdue reform also in a very short time.

I feel very confident that there will be little opposition to give due and just property rights to women by any section of this House. At the time of the discussion of the Hindu Marriage Bill, even those who opposed it did so because they felt that without economic independence and property rights for women the provision of divorce was not only not going to be of any use to them, but would operate against their interest. They were really very very honestly sympathetic to the cause of women, but their only difficulty was that unless women were economically independent this clause of divorce would operate against them. Now that the Bill has been passed, I hope and trust that those very hon. Members, who in very clear and emphatic terms showed all that amount of sympathy for women and said that they should get economic independence, will, I am sure, now find no excuse to oppose a measure of this kind. I am sure, Sir, that having passed that Bill, it would now be the moral and legitimate duty of those gentlemen to see that to woman is restored her natural rights in property and to take steps to ensure her economic independence and that could only be done by removing the invidious distinction between the son and daughter in the matter of inheritance and to making the woman the full owner of whatever property she acquires whether by inheritance or otherwise. I therefore feel almost sure that having once passed the Hindu Marriage Bill even the opponents will come forward to support the cause of the economic independence of women because it is now more than necessary that having made that provision there for divorce they must see that women get economic independence so that, that provision will have no chance of misuse as we believe it is otherwise I am convinced about the sincerity of some of them and I hope to place this measure on the statute book with very little opposition, in view of the

[Shri Pataskar]

nature of the discussion to which I was listening to so far.

This Bill has been prepared after giving very careful consideration to all the opinions that have been expressed by the different interest on the subject, ever since the year 1939. As the Bill will be fully examined by the Joint Committee and will eventually come to this House for detailed consideration at the proper stage, I do not think I need take any more time of the House in making this motion.

I would appeal to all Members to consider the present Motion and the broad features of this Bill as I have already indicated and pass this motion for reference to the Joint Select Committee without any delay.

Sir, I commend the motion to the acceptance of the House.

Mr. Chairman: Motion moved:

"That this House concurs in the recommendation of Rajya Sabha that the House do join in the Joint Committee of the Houses on the Bill to amend and codify the law relating to intestate succession among Hindus made in the motion adopted by Rajya Sabha at its sitting held on the 25th March, 1955 and communicated to this House on the 28th March, 1955 and resolves that the following members of Lok Sabha be nominated to serve on the said Joint Committee, namely; Shri Satyendra Narayan Sinha; Pandit Dwarka Nath Tiwary; Shrimati Tarkeshwari Sinha; Shrimati Uma Nehru; Shri Raghubar Dayal Misra; Shri Bulaqi Ram Verma; Shri Birakisor Ray; Dr. Pashupati Mandal; Shrimati Jayashri Raiji; Choudhary Raghubir Singh; Shri C. R. Basappa; Shri Rayasam Seshagiri Rao; Shri M. Muthukrishnan; Shri Khub Chand Sodhia; Shri Vaijnath Mahodaya; Dr. Devrao Namdevrao Pathrikar Kamble; Shri Dev Kanta Borooal; Sardar Iqbal Singh; Shri Bheekha Bhai; Shri M. L. Dwivedi; Shri Radha Raman; Shri Shankar Shantaram More; Shrimati Sucheta Kripalani; Shrimati Renu Chakravartty; Shri S. V. L. Narasimham; Shri Vishnu Ghanashyam Deshpande; Shri Girraj Saran Singh; Shri K. A Damodara Menon; Shri Choithram Partabrai Gidwani and the Mover."

Shri S. V. Ramaswamy (Salem): I think the speech should be circulated to Members.

Dr. Suresh Chandra (Aurangabad): Could we also have the Rau Committee's Report? It is not available in the Library.

Shrimati Renu Chakravartty (Basirhat): The Rau Committee's original recommendations are not available to us. I think some copies should be either laid on the Table or cyclostyled and circulated so that the original recommendations of this part should be at least made available to Members. I made a request that since the original recommendations of the Rau Committee, specially dealing with Succession, are not available either in the Library or there are no spare copies, this portion should be cyclostyled and made available to Members of Parliament.

Shri Pataskar: I had a request from the hon. Member. But I have got only one copy.

Shrimati Renu Chakravartty: This portion can be cyclostyled.

Dr. Suresh Chandra: This portion can be cyclostyled and circulated.

Shri Pataskar: Yes.

Dr. Tek Chand (Ambala-Simla): Perhaps it would conduce to better appreciation and understanding of the proposed changes if we could have—it would hardly be a page each—the corresponding bit from the Hindu law as it exists, the provision in the Succession Act and the provision in the

Muhammadan law. It would not run more than three pages. If this is given Members could examine the matter comparatively and may be able to offer their contribution.

Shri Pataskar: With regard to the comparison, what was there in the draft Code as proposed by Mr. Rau, what was there in the Select Committee, and what is now provided in the Bill, that will be done. But with regard to existing law it is difficult, as Mr. Tek Chand will know, because laws differ from place to place. But if it is possible, all these three can be put. Only, it will take some time.

Shrimati Renu Chakravartty: I was saying about the Rau Committee's Report.

Shri Pataskar: That I will, and even this thing. But it will take some time

श्री विभूति मिश्र (सारन व चम्पारन): सभापति महोदय, ऐसा होता है कि जब बिल पेश होता है, तो बहुत से आदमियों को ज्यादा समय दिया जाता है और बाद में कई सदस्यों को समय नहीं मिलता है। इसलिये यह आवश्यक है कि समय क बारे में स्ट्रिक्ट रहा जाये और सब को यूनिफार्म समय दिया जाये, ताकि किसी को वंचित न रहना पड़े। यह एक सोशल लेजिस्लेशन है और यह हर एक आदमी को एफेक्ट करता है और हर एक आदमी का इस से सम्बन्ध है।

Shri Tek Chand: This is very important.

सभापति महोदय: मेरी अपनी ओपिनियन यह है कि जो मेम्बर शुरू शुरू में बोलता है वह उन बातों का जिक्र करता है जिन का कि जिक्र पहले किसी मे नहीं किया होता और वह काफी ग्राउंड को कवर कर लेता है। उसको ज्यादा से ज्यादा समय मिलना चाहिये। यह मेरी परसनल ओपिनियन है। उस मेम्बर को ज्यादा समय मिलना चाहिये ताकि वह हाउस को एनलाइटन कर सके। उसके बाद जो मेम्बर बोलते हैं उनको केवल नये विचार हाउस के सामने रखने चाहियें।

Shri Nand Lal Sharma (Sikar): Is it meant that other Members cannot speak on these matters?

Mr. Chairman: I never meant that. What I meant was that in the beginning when a Member speaks, he makes points which have not been placed before the House previously. But subsequently those very points need not be repeated by other Members. Therefore they have a bit of a limited scope.

Shri S. V. Ramaswamy: There should be a time-limit, so that more Members can participate.

Mr. Chairman: I shall see how the discussion proceeds.

पंडित ठाकुर दास भार्गव (गुड़गांव): जनाब चैयरमैन साहब......

Shri M. D. Joshi (Ratnagiri South): At the outset some rough time-limit may be fixed, so that we may know what time we may get.

Pandit Thakur Das Bhargava: So far as Bills are concerned, the Rules provide that there is absolutely no time-limit, but as a matter of convenience it is always seen that persons do not take an undue portion of the time. It is perfectly all right. But the provision in the Rules is like that. At the same time the House knows there is an outside time also, because we have to finish this within, I think, ten hours.

Dr. Suresh Chandra: It should be observed by every Member.

Mr. Chairman: I do not know what is the time allotted for this. I understand it will go on Saturday. May I suggest the time-limit that is generally observed in this House, namely that a Member should not exceed fifteen minutes and in exceptional cases Leaders of Groups may speak up to half an hour? That is the rule that I have found observed in this House.

Shri Nand Lal Sharma: What have Leaders of Groups got to do with this subject? It is Hindu law.

Shri Pataskar: This is only a motion to refer the Bill to a Joint Committee, or rather joining in the Select Committee. And we are sitting on Saturday. I think, normally, by Saturday evening we should be able to pass this motion.

Mr. Chairman: That we shall have to do.

पंडित ठाकुर दास भार्गव : जनाब चेयरमेन साहब, इस बिल के विषय में जो कुछ भी पाटस्कर साहब ने कहा है उस को मैं ने बहुत गौर से सुना है। यह बिल और इसी तरह के और बिल सन् १९१४ से लैजिस्लेचर के सामने आते रहे हैं और इस किस्म का आखिरी जो बिल आया वह सन् १९३७ में आया था और वह एक ऐसा बिल था कि जिस ने बहुत बड़ी तबदीली हमारे सोशल सिस्टम में की। ला मिनिस्टर न जो हाउस से अपील की है, उस की तरफ मैं ने पूरा ध्यान दिया है और मुझे उम्मीद है कि जो हिदायत और जो नसीहत उन्होंने दी है हम उस पर कारबन्द रहेंगे और उस पर अमल भी करेंगे। लेकिन मेरी गुजारिश है कि हम भी जो हिदायत देंगे उस पर भी आनरेबुल ला मिनिस्टर और उन की मिनिस्टरी पूरी तरह गौर करेगी और उस पर अमल करने की भी कोशिश करेंगी। मै यह इस वास्ते कह रहा हूं यह मामला एक ऐसा मामला है कि जिसमें हमारे आबजैक्टिव में कोई फर्क नहीं है लेकिन उस आबजैक्टिव को एचीव करने के जो रास्ते हैं, जो तरीके हे उनके अंदर बड़ा फर्क है। इस वास्ते मैं अर्ज करता हूं कि जो प्वाइंट आफ व्यू मेम्बर साहिबान उन के सामने रखें उन की तरफ वह जरा गौर से ध्यान दें। इस बिल के द्वारा जिस आबजैक्टिव को हम एचीव करना चाहते हैं, जैसे कि आनरेबुल ला मिनिस्टर साहब ने बताया, वह है कान्स्टीट्यूशन के उस प्रोविजन पर अमल करना जिस में कि यह हिदायत की गई है कि हर एक आदमी को चाहे वह मर्द हो या औरत, सोशल जस्टिस मिले। एक अहम सावल जो हमारे सामने है वह यह है कि हमारी जो बहनें हैं उन के राइट्स को किस तरह से रिएडजस्ट करें कि उन को प्रापर्टी में राइट्स मिल जायें। मेरे ख्याल में इस सारे भवन में कोई ऐसा आदमी नहीं होगा जो आज सन् १९५५ में यह कहना चाहता है कि औरतों को हकूक नहीं मिलने चाहियें। इसमें कोई शक नहीं कि औरतों के हकूक का मसला दुनिया के हर देश के सामने रहा है विलायत में सन् १८८३ में मैरीड वोमेंस प्रापर्टी एक्ट पास हुआ, एवोल्युशन हुआ, और यह ऐक्ट फौरन ही नहीं बन गया। इस के बनने में काफी दिक्कत पेश आई। हमारे देश के अन्दर पहले पहल औरतों का एक बहुत बड़ा रुतबा था, वह घर के अन्दर क्वीन हुआ करती थीं। लेकिन ताहम जहां तक प्रापर्टी का मसला था एक ऐसा वक्त आया जब औरतों की एक लिमिटेड एस्टेट रह गई और लिमिटेड एस्टेट के सिवा उन को हिन्दू ज्वायंट फैमिली में कोई जगह न मिली। वैसे ही जो एन्सैस्ट्रल प्रापर्टी थी उस के अन्दर आम तौर पर उन का इनहेरिटैंस नहीं होता था। अब हमारे सामने सवाल यह है कि हम इस मसले को किस तरह से हल करें। इस मसले को लाइटली, इतना कह कर कि कोई आदमी डाटर के राइट्स की बात को न मान लेगा और जो प्रोपोजल आनरेबुल मिनिस्टर साहब ने रखी है वह ठीक हैं, ले कर हल करें यह वाजिब नहीं होगा। अब हमें जो रास्ता अपनाना है वह एक ऐसा रास्ता होना चाहिये जो कि लोगों की तबीयत व जजबात के मुताबिक हो, हमारे रीति रिवाजों के मुताबिक हो। हमारे हालात के मुताबिक हो। मुझे डर है कि इस मामले में प्रेजुडिस से काम लिया जायेगा और मैं अर्ज करता हूं कि प्रेजुडिस से न काम लिया जाये।

अभी मैंने आनरेबुल मिनिस्टर की तकरीर सुनी और अपनी तकरीर के दौरान उन्होंने

अभी जो बिल पास हुआ है उसका हवाला भी दिया है और वह चाहते हैं कि उसी की बिना पर इस बिल को भी पास कर दिया जाये। उस बिल के अन्दर आनरेबुल मिनिस्टर साहब ने रिवाजों को, रस्मों को, पुराने तरीकों को बहुत ज्यादा जगह दी है। उस बिल के मुताबिक आप ने तलाक के दो टुकड़े कर डाले हैं जिन लोगों के वास्ते नया कायदा है उन क लिय तो दफ़ा १३ है और जिन के लिये पुराना कायदा चलता है उनका किस ग्राउंड पर हो, किस तरह होगा, कौन करेगा, इन बातों का कुछ पता नहीं है। उसके लिये दफा २९ लगाई है—इसलिये उन्होंने यूनिफिकेशन की तो टांग तोड़ दी है।

अभी फिर उन्होंने यूनिफिकेशन की बात की। मैं समझता हूं कि वे इस के लिये सीरियस हैं और मैं उनकी नियत पर शक नहीं करता। कम से कम मैं उन के बारे में तो कह सकता हूं कि वह जो कहेंगे उस पर जरूर अमल करेंगे। जो कुछ भी उन के बिल में था उन्होंने बता दिया। जिस तरह से वह अपनी स्पीच में एपौलोजेटिक थे उस के बिना पर तो मैं विश्वास के साथ कह सकता हूं कि वह अपना फर्ज अदा करेंगे।

3 P.M.

लेकिन मैं अदब से अर्ज करना चाहता हूं कि इस मामले में राय बड़ी मुख़तलिफ हो सकती है क्यों कि हमने देखा है कि हालांकि हिन्दू मैरिज बिल में हमारा आबजेक्टिव एक ही था, हम एक ही नतीजे पर पहुंचना चाहते थे, लेकिन राय हम लोगों की मुख़तलिफ़ थी। इस बिल में भी मैं देखता हूं कि हमारा आबजक्टिव एक है ही और मैं आनरेबुल मिनिस्टर या हाउस के किसी भी मेम्बर से कम ऐंग्जाइटी नहीं रखता कि मेरी बहनों के जो मुनासिब हकूक हों, वह उन को जरूर देने चाहियें। मैं तो यह जानता हूं कि अगर हिन्दुस्तान की औरतों को उनके वाजिब हकूक से महरूम रखा जायेगा तो नेशन एज ए होल सारी की सारी उसकी डिटीरियोरेशन होगा और सबको नुक़सान पहुंचेगा। अगर मेरी बहन, मेरी लड़की फाइनेंशिएली इंडिपेंडेंट है, मज़बूत है और अपने आप सब चीजों का इंतज़ाम कर सकती है और आज़ाद है किसी हद तक, तो उस से बढ़ कर खुशी की बात क्या हो सकती है। इस वास्ते हम को वही ख्याल रखना चाहिये और जैसा के आनरेबुल ला मिनिस्टर ने बतलाया है कि हम सब का भला और देश का भला किस कायदे से कर सकते हैं। मेरे आनरेबुल मिनिस्टर साहब पहले से वाकिफ होंगे कि अपर इंडिया में ख़सूसन् उत्तर प्रदेश, बिहार और दूसरे हिस्सों में और खास तौर पर पंजाब में जहां पर औरतों के हकूक का सावल आता है, वहां पर जिस तरीके से आनरेबुल मिनिस्टर उनको हकूक देना चाहते हैं, इस तरह से रीति और रिवाज हमारे इस इलाके में नहीं हैं। मैं उन की नौलेज के वास्ते इतना अर्ज कर दूं कि मैं पंजाब की निस्बत ज्यादा जानता हूं। पंजाब के अंदर सन् १८७२ के एक्ट की दफ़ा १० के मुताबिक

Custom was the first rule of decision in regard to matters of inheritance, partition, divorce etc.

सन् १९०९ से पहले पंजाब में सेल्फ एक्वार्यड प्रापर्टी में से भी बेटियों को कुछ नहीं मिला करता था क्यों कि पंजाब एक ऐसा प्रदेश था जिसके अन्दर

Custom was the first rule of decision in regard to matters of inheritance, partition, divorce etc.

उसके बाद पंजाब हाईकोर्ट का फैसला हुआ और उसकी रूलिंग हुई और (२) आफ १९०९ की रू से लड़की का बाप की खुद पैदा करदा जायदाद में हक कायम हुआ। जहां तक सेल्फ एक्वार्यड प्रापर्टी का सवाल था एक लड़की को जब कि उस का बाप मर जाता था और बाप के लड़के और औरत न होती थी तो उसकी सेल्फ एक्वार्यड प्रापर्टी में हक़ मिलता था। लड़के व बेटा की मौजूदगी में लड़की क

[पंडित ठाकुर दास भार्गव]

जायदाद में हक नहीं मिलता था —विडोज के वास्ते भी ऐसा नहीं था कि विडो अपने लड़के के साथ एक्सीड नहीं करती थी। विडोस को राइट आफ मेंटेनेन्स था। विडो को यह राइट नहीं था कि वह अपने लड़के के साथ जायदाद को सक्सीड कर सके, यह हालत थी पंजाब के अन्दर। जब सन् ३७ में देशमुख साहब का ला पास हुआ उसके अन्दर भी यह कहा गया कि सब इलाकों के अरबन ऐरियाज जो हिन्दू लाज मौजूद हैं उनके ऊपर एक ला बनाया जाय लेकिन बाकी सारे पंजाब के वास्ते यह ला नहीं बना। अगर आप सन् ३७ के ला को मुलाहज़ा फरमायेंगे तो आपको यह चीज रोशन हो जायेगी। अब सवाल यह पैदा होता है कि अगर जायदाद का हक़ इस तरह से जैसा बिल में दर्ज है एक दम से बदल देना चाहें तो क्या देश इस चीज को फ़ौरन राज़ी खुशी मान लेगा ? आप ज़बर्दस्ती उसके ऊपर लादना चाहे तो यह आपकी खुशी है और उस हालत में मुझे कुछ नहीं कहना है। सवाल यह है कि क्या ऐसी चीज को जो उनके हमेशा के रिवाज और रीती के बरखिलाफ़ है, पंजाब और दूसरे अपर इंडिया के इलाके इस तरह से मान लेंगे जिस तरह से कि आनरेबुल मिनिटर साहब करना चाहते हैं ? यह सवाल हमारे सामने होना चाहिये और यक़ीनन यह बड़ा मुश्किल सवाल है। मैं कहना चाहता हूं कि इस तरह देश में आप का नया बिल नहीं माना जावेगा देश में सख्त मुख़ालिफत व गड़बड़ होगी। इसी लिये मैं आपकी खिदमत में एक आलटरनेटिव रखना चाहता हूं और मैरिज बिल के वक्त भी मैंने एक आलटरनेटिव पेश किया था। मैं कोई धर्म शास्त्र का ज्ञाता नहीं हूं लेकिन मैं इतना जानता हूं कि हिन्दू ला के अंदर, हिन्दू शास्त्रों के अन्दर दर्ज है कि पैदाइश से आदमी का हक मुश्तरका खानदान में हो जाता है जैसा द्विजन्म होता है वह औरत का द्विजन्म शादी से होता है। जब औरत की शादी हो जाती है तो उसका गोत्र भी बदल जाता है और उसका गोत्र शादी हो जाने के बाद खाविंद का गोत्र हो जाता है, उसकी सारी हस्ती उस खानदान में ट्रांसफर हो जाती है और वह पति के खानदान की एक मेम्बर बन जाती है और इस तरह एक नये खानदान की बुनियाद पड़ती है। मेरी अर्ज यह है कि अगर आप इस चीज को रिएलाइज करें कि सारे अपर इंडिया में सारी एकोनमी हर एक हिन्दू खानदान की सन सेंटर्ड (Son centered) एकोनमी है, ग़लत है या नहीं है, इस पर नहीं अर्ज करना चाहता। धर्म शास्त्र की रू से कहिये या पिंड की रू से कहिये हिन्दू ज्वाइंट फैमिली में लड़के को जो फ़ौकियत हासिल है वह लड़की को हासिल नहीं है। यह क्वश्चन आफ फैक्ट है। खानदान को चलाने वाला लड़का समझा जाता है लड़की नहीं। एक खानदान के अन्दर बाप और लड़का रात दिन एक जगह पर रहते हैं, जायदाद मिल कर पैदा करते है, शादी के बाद लड़की तो दूसरे घर चली जाती है और दूसरे घर की मालिक हो जाती है लेकिन बेटा और बाप मुश्तरका तौर पर खेती करते हैं, मुश्तरका तौर पर कमाई करते हैं और मुश्तरका तौर पर खानदान को पालते हैं। लड़की तो शादी हो जाने पर दूसरे खानदान में चली जाती है और उसकी सारी कोशिश दूसरे खानदान के अंदर होती है और वह वहां पर दौलत भी पैदा करती है और अपने बाल

बच्चों के साथ उस खानदान में रहती है और उस खानदान को आगे बढ़ाती है, वह उस खानदान की हो जाती है और यह एक ऐसा फैक्ट है जिसको कि मैं अर्ज करना चाहता हूं कि कोई कंट्रोवर्ट नहीं कर सकता। इस सम्बन्ध में सवाल पैदा होता है कि हम अपनी बहनों को किस तरह से इस क़ाबिल बनायें कि वह जायदाद की हकदार हों और पूरी हक़दार हों। मेरी तजवीज़ यह है और जो मैं कई दफा बतला चुका हूं और जो मुझे बिलकुल दुरुस्त मालूम होती है, मैं यह नहीं कहना चाहता कि हर एक शादी के साथ फ़ौरन ही मर्द या औरत कहे कि मैं आधी जायदाद की मालिक हो गयी हूं और हो सकता है कि इस कारण बहुत से धनाढ्य लोग शादी करना ही पसन्द नहीं करेंगे क्योंकि शादी के साथ ही उनकी जायदाद बंट जायेगी, लेकिन आम तौर पर मैं जानता हूं कि हिन्दुओं के पास भी जो इस देश के अन्दर ग़रीब आदमी हैं क्या दौलत होती है। अगर शहर का रहने वाला हुआ तो एक दुकान और एक मकान से ज्यादा उसके पास नहीं होता और अगर गांव का रहने वाला हुआ तो उसके पास एक कच्चा पक्का मकान होता है और थोड़ी सी खेती करने की ज़मीन होती है। इसके सिवाय उसके पास और कोई इम्मूवेबुल प्रापर्टी नहीं होती है। जब मैजारिटी ऐसे लोगों की हमारे देश में हैं जो इतनी जायदाद रखते हैं, तो मैं अदब से आप से पूछना चाहता हूं कि अगर शादी के साथ ही जो नया घर बनाती है, नई बुनियाद पड़ती है, अगर आप यह फैसला कर दें कि In the absence of contract to the contrary शादी के फ़ैक्ट के साथ अपने खाविंद की जायदाद में उसी दिन निस्फ हिस्से की जायदाद में हक़दार होगी और आयन्दा जहां उसका खाविंद अपने बाप के खानदान में सक्सीड करेगा, बीबी भी साथ-साथ उसके सक्सीड करेगी, आयन्दा जितना एक्विज़ीशन होगा उसमें दोनों मुश्तरका होंगे, तो मैं अदब से अर्ज करना चाहता हूं कि आप इस देश के अंदर एक सिलसिला बनाते हैं जिसके अन्दर कि डाटर को सक्सीड करने की ज़रूरत नहीं रहती। मैं बतलाऊं कि उसको जायदाद का ऐसा हिस्सा मिलता है जो उसका हक़ है, जिसकी तरफ़ जाने की ज़रूरत नहीं है, उसका अपना ही सेल्फ़ एक्विज़ीशन है, इसमें शक ही नहीं रहता है। मैं अर्ज करना चाहता हूं कि जहां तक खानदान के अंदर लड़की का बाप की जायदाद में हिस्सा लेने का सवाल है, उसके मुताल्लिक मेरे लायक दोस्त ने अर्ज किया पुराने शास्त्रों के अनुसार लड़की का बाप की जायदाद में एक चौथाई हिस्सा होता था और कहीं शास्त्रों में लड़की के लिये आधे हिस्से का ज़िक्र आया है दर असल ऐसा जो दर्ज है वह ग़ैर शादी शुदा लड़कियों के लिये है...

श्री पाटस्कर : मैंने शास्त्रों का नाम छोड़ दिया है।

पंडित ठाकुर दास भार्गव : मैं शास्त्र के ऊपर नहीं जाना चाहता, आपने शास्त्र के ऊपर जाना शायद इसलिय छोड़ दिया कि चटर्जी साहब फिर शास्त्रों का हवाला देंगे और कोट करेंगे। मुझ को उनसे कोई डर नहीं है और मैं तो यह अर्ज करना चाहता हूं कि शास्त्रों में भले ही कुछ लिखा हो, हमें तर्क और बुद्धि की कसौटी पर हर बात को तोल कर तब निश्चय करना चाहिये। मैं तो इस मत का हूं कि आज इस देश का शास्त्र बनाने वाले इस भवन के अन्दर बैठे हुए हैं और उनको पूरा हक़ है कि इस चीज का फ़ैसला करें।

[पंडित ठाकुर दास भार्गव]

मैं इसमें यक़ीन नहीं रखता कि जो हमारी पुरानी चीजें हैं और शास्त्र और स्मृतियां हैं उनको आंख बंद करके उन्हीं का राग अलापा जाय और मैं हमेशा के लिये अपने को उनके दायरे में बांधने को तैयार नहीं हूं, मैं यह भी बतला दूं कि चूंकि शास्त्र में ऐसा लिखा हुआ है, इस वास्ते मैं इसको बदलने को तैयार नहीं हूं, मैं उस ख्याल का हामी नहीं हूं। मैं तो, जैसा कल हमारे श्रद्धेय टंडन जी ने कहा, युक्ति का क़ायल हूं और मैं युक्ति की कसौटी पर इस चीज को जांचना चाहता हूं और खुद मिनिस्टर साहब भी मैं चाहता हूं कि इस सवाल को इसी युक्ति की कसौटी पर जांचें।

श्री पाटस्कर : जी, यही कसौटी हमारी है।

पंडित ठाकुर दास भार्गव : दरअसल इस मामले में अगर आप यह देखें कि लड़की को इस तरह से आप हक़ दें तो जो पुरानी प्रथा जिसके लिये कि आप कहते हैं कि लड़की का बाप की जायदाद में एक चौथाई या आधा हिस्सा था, तो उसके बारे में मुझे बतलाया गया है कि वह हिस्सा अनमैरिड डॉटर के वास्ते था। मैं इस चीज को मानता हूं कि (Unmarried) गैर शादी शुदा लड़की को हक़ देना चाहिये, मैं आपके आधे हिस्से का क़ायल नहीं हूं और मेरी नाक़िस राय में अपनी बहनों को आधा हिस्सा देना मुझे ठीक नहीं जंचता और वह नाकाफी है।

मैं इस बात को मानने के लिये तैयार नहीं हूं कि आप डॉटर को आधा हिस्सा दें। मेरी जो भी राय थी उसे मैंने सिलेक्ट कमेटी हिन्दू कोड बिल की बहस के वक्त पर कहा था। मेरी राय में अगर हिस्सा देते हैं तो पूरा हिस्सा देना चाहिये। कोई वजह नहीं कि उसे आधा हिस्सा दिया जाय। आधा हिस्सा मुसलमान भाइयों के कानून में था, जिनकी अलाहदा क़िस्म की एकोनमी थी, अलाहदा क़िस्म के क़ानन थे। उस एकोनमी को हम मानते जा रहे हैं, यहां इस देश ने हिन्दू मुसलमान, ईसाई सब लोगों ने एक दूसरे के क़ायदे को माना है, उसूल को माना है। हमने क्रिश्चियन लॉ की और मुसलिम लॉ की तमाम चीजों को माना है और मानते जा रहे हैं। इसी तरह से मुसलमानों ने हमारी सारी बातों को अपने लिये मान लिया था। मैं मौजूदा कलचर को कम्पोजिट कल्चर समझता हूं लेकिन मैं चाहता हूं कि कानून बनाते समय मैं जहां तक मुमकिन हो हिन्दू कल्चर को न छोड़ूं।

एक दूसरे सिलसिले में मैंने अर्ज किया है जिस से आप इस चीज को हल कर सकते हैं, इसकी डिटेल्स के अन्दर जा सकते हैं और अगर आइन्दा आप डिटेल्स में जायेंगे तो ऐसा सोल्यूशन मिलेगा जिसके अन्दर आप नार्थ इंडिया के अन्दर एक बड़ा भारी एजिटेशन बनाये बग़ैर और हर घर में मुकदमेबाजी की बुनियाद न डालकर इस मसले को हल कर सकेंगे। इसलिये मैंने यह मसला यहां रखा है। आगे क्या चीज बनेगी इस सब के ऊपर भी आसानी से गौर हो सकता है। मैं ने एक ऐमेन्डमेन्ट उस वक्त पेश किया था जब कि मैरेज बिल यहां पर चलता था। लेकिन मैं जानता था कि उस पर हाउस के अन्दर गौर नहीं होगा। वह एक आल्टर्नेटिव चीज है, इस को हमें देखना चाहिए जब हम नया हल निकाल सकते हैं तो कोई वजह नहीं है कि हम पुराने रास्ते स चलें और इन बातों को न देख।

Shri Pataskar: This will be considered by the Select Committee. I do not say that it will not be.

रक्षा संगठन मंत्री (श्री त्यागी) : लड़कियों की शादी मुश्किल हो जायेगी, लड़कों की तो कोई बात नहीं है।

पंडित ठाकुर दास भार्गव : लड़कियों की शादी मुश्किल हो जायेगी, वह कैसे ?

आपने जो नया बिल हमारे सामने यहां पर रखा है, उसके अन्दर कई ऐसी बातें और तजवीजें रखी हैं जो पहले किसी बिल में नहीं थी और जिन पर मुझे थोड़ा सा एतराज़ है। पहली बात जो आपने की और जो मेरे ग्रेन के खिलाफ है वह यह है कि आप ज़िक्र करते हैं मिताक्षरा का, आप ज़िक्र करते हैं युनिफ़ार्मिटी का, आप कहते हैं कि सारे हिन्दू एक क़ानून के अन्दर आ जायें। इस बिल के एक सफ़ह पर न जाने कितने नाम कानूनों के लिखे हुए हैं, अलस्थानम और दूसरा नाम तो बड़ा मुश्किल है।

श्री पाटस्कर : अलियसन्तानम्।

पंडित ठाकुर दास भार्गव : यह नहीं दूसरा जो है। मरुमक्तैयम, इसकी दफा, ५(३) में कोई २०, २५ नाम हैं, इनको देख कर मुझे वह वक्त याद आता है जब कि यह बिल पहले हमारे सामने आया था। डा० अम्बेडकर का बिल ज़रूर इस क़िस्म का था जिस में कहा गया था कि हम सारे हिन्दुस्तान को एक अम्ब्रेला के नीचे लायेंगे, आज हमने सारे सिविल क़ानून को, जिसमें सक्सेशन भी है, हिन्दू कोड बिल में शामिल कर दिया। मेरे पास डा० अम्बेडकर का पुराना हिन्दू कोड मौजूद है जिसमें उन्होंने सब जातियों व कानूनों को एक ही में शामिल किया था। वह युनिफार्मिटी का बिल था, आपके इस बिल में युनिफार्मिटी कहां है? मद्रास के और साऊथ के लिये आपने मैरिज व डाइवोर्स के लिये कस्टम की पूरी जगह रख दी, यहां पर आपने कस्टम को, कानूनों को succession के लिये निकाल दिया इस बिल से। क्या वह हमारे भाई नहीं हैं? क्या हम उनको शामिल नहीं कर सकते? अगर आप कहते हैं कि उनके तरीक़े जुदा हैं इसलिये उनको अलाहदा कर दिया जाय....

Shrimati Renu Chakravartty: But inheritance by survivorship is also excluded. There is no uniformity. Even survivorship is excluded.

पंडित ठाकुर दास भार्गव : दूसरी चीज़ जिसकी तरफ़ में आपकी तवज्जह दिलाना चाहता हूं वह यह है कि आपने हिन्दू ज्वाइंट फ़ैमिली को इससे बिल्कुल एक्सक्लूड कर दिया। आपने आखीर में जो फ़रमाया उसको सुन कर ज़रा तसल्ली हुई कि आप यह देखना चाहते हैं कि यहां दायभाग ला किया जाये या मिताक्षरा को कायम रखा जाय, इसको आप देखेंगे, इसको एक्सप्लोर करेंगे, लेकिन आप का जो बिल है उसमें आप साफ़ लिखते कि यह हिन्दू ज्वाइंट फ़ैमिली को ऐप्लाई नहीं करेगा। नतीजा यह होगा कि आज एक शख्स मर गया जिसके पास ज्वाइंट प्रापर्टी भी है और सेपरेट प्रापर्टी भी है उस पर दो क़ानून लागू होंगे। एक तो ज्वाइंट फ़ैमिली प्रापर्टी का और दूसरा बिल जो आप इस वक्त रख रहे हैं।

श्री पाटस्कर : मैंने क्या कहा था ?

पंडित ठाकुर दास भार्गव : आपने पार्टिशन के बारे में इस बिल में कोई प्राविज़न नहीं किया है।

Shri Pataskar: Regarding that point in the Bill, I gave my own opinion.

Dr. Suresh Chandra: He is accepting it.

Shri Pataskar: I am not accepting it.

पंडित ठाकुर दास भार्गव : मैं यह अर्ज करना चाहता हूं कि मैं हिन्दू कोड बिल की जो शक्ल देखना चाहता हूं वह यह है कि एक भी हिन्दू इस देश में ऐसा न हो जो इस बिल से गवर्न न होता हो, जो इसके प्राविजन्स से गवर्न न होता हो। अगर कोई जुडीशियली रिकगनाइज्ड रिवाज है, कोई कस्टम है, जैसे कि आप मद्रास के बारे में कहते थे, तो उसको इसमें रख दिया जाय कि वहां यह चीज़ रिकगनाईज्ड, है, इसको मैं मान सकता हूं। मैं इसको ज्यादा पसन्द करता हूं कि आप पहले ही इस बिल के टुकड़े बखेर कर के रख दें।

"It shall not apply to Hindu joint family; it shall not apply to those in the South; it shall not apply to individual family property owners, etc., etc."

पहली चीज़ जो मैं अर्ज करना चाहता हूं वह यह है।

दूसरी चीज़ जो कहना चाहता हूं वह यह है कि हिन्दू ज्वाइंट फ़ैमिली की यहां जो हालत है वह किसी से छिपी हुई नहीं है। सब लोग जानते हैं कि यह ऐसा अच्छा इन्स्टिट्यूशन है जिस के पीछे आज आप भी भागते हैं, जिसको आज आप को-ऑपरेटिव के नाम से याद करते हैं, यह चीजें, आपके पास पहले मौजूद थीं जिन का आज देश भर में इतना ज़िक्र करते हैं। ऐसे ही पहले पंजाब में Zemindari Tenure के गांव थे जिस में सारे गांव की खेती मुशतरका होती थी और फिर हिस्से बांट लेते थे। पंजाब में जो ज़मींदारी सिस्टम ऑफ विलेजेज़ रायज था उसको अंगरेजों ने खत्म कर दिया, और अब जो हिन्दू ज्वाइंट फैमिली का बाकी है वह आप की मेहरबानी से खत्म होने जा रहा है। हिन्दू ज्वाइंट फ़ैमिली के साथ इन्कम टैक्स के मामले में आप जो व्यवहार करते हैं वह सब को मालूम है। इस वास्ते मैं अर्ज़ करूंगा कि आप हिन्दू ज्वाइंट फ़ैमिली को इस हिन्दू बिल से न निकालें। हिन्दू बिल के अन्दर हिन्दू ज्वाइंट फ़ैमिली का कोई ज़िक्र न हो, उसे बिल्कुल उसमें से अलाहदा कर दिया जाये, यह मैं समझ नहीं सकता। आपने ज्वाइंट फ़ैमिली को तो इस बिल से ही खारिज कर दिया है। आप इस पर कैसे ग़ौर करेंगे। मुझे डा० अम्बेडकर के शब्द याद आते हैं। डा० अम्बेडकर ने अपने बिल में हिन्दू ज्वाइंट फैमिली को शामिल किया था और यहां तजवीज यह थी, जिसका थोड़ा सा इन्डिकेशन दिया गया था, कि सर्वाइवरशिप को ही हटा दिया जाये, दायभाग सिस्टम को हमेशा के लिये लागू कर दिया जाये, अब वक्त आ गया कि मिताक्षर की हिन्दू ज्वाइंट फैमिली सिस्टम में अगर कुछ जान बाक़ी हो, तो उसको खत्म कर दिया जाये, उसमें सांस बाक़ी न रहे। यह डाक्टर अम्बेडकर की राय थी। आपने अपनी कोई कोशिश इसके लिये उठा नहीं रखी और नतीजा यह हुआ है कि उसमें जान बाक़ी नहीं रह गई है। आपने एस्टेट ड्यूटी ऐक्ट बनाया, उसमें हिन्दू ज्वाइंट फ़ैमिली को खत्म कर दिया और दूसरे मुख्तलिफ़ क़िस्मों के तरीक़े भी आपने इसके लिये इस्तेमाल किये। आप अपने इनकम टैक्स लॉ को ही ले लीजिये, उसकी दफ़ा २५ जो है वह हिन्दू ज्वाइंट फ़ैमिली को जिन्दा नहीं रहने देगी, आप सोचते हैं कि इस मुर्दा चीज़ को रखने की क्या जरूरत है। हमारा लॉ इस तरह बनाया

जा रहा है। ग्राज के दिन इन्टेस्टेट सक्सेशन है ताकि हिन्दू ज्वाइंट फ़ैमिली ऐसी ही डिवाइडेड हो जाय जैसे कि ग्राज दायभाग सिस्टम में हर एक ग्रादमी डिवाइडेड है । मेरी तो नाक़िस राय यह है कि ग्राप उसी तरह से चलें जिस तरह से डा० ग्रम्बेडकर ने शुरू में रखा था ग्रौर जिसको ग्राइन्दा ज़ोर पड़ने पर उन्होंने किसी हद तक हटा लिया था। डा० ग्रम्बेडकर में ग्रौर ग्राप में फ़र्क़ यह था कि डा० ग्रम्बेडकर जो कुछ कहते थे वह इस तरीके से कहते थे कि वह लोगों को कड़वी लगती थी ग्रौर हाउस में वह बिल पास नहीं हो सका। ग्राज कड़वी से कड़वी बात ग्राप करते हैं जिससे ग्राइन्दा नुक्सान पहुंच सकता है, लेकिन जेन्ट्लनेस से ग्राप फरमा देते है, मीठे ग्रल्फाज में बातें कहीं जाती हैं, हम से हमदर्दी दिखलाई जाती है, लेकिन वह सिवा हमदर्दी के ग्रौर कुछ नहीं है। परनाला वहीं पड़ता है। जो ग्रापकी तजवीज़ें पुरानी रीतियों व लोगों के ख्यालात के बरखिलाफ हैं वह देश में न चलेंगी ग्राप यहां वोटों से चाहे पास कर लें । ग्राज इस बिल से ग्राप हिन्दू लॉ को तब्दील करने चले हैं, ग्रौर कहते हैं कि सोसायटी की जो प्रोग्रेसिव नीड्स हैं उनके मुताबिक कर रहे हैं। लेकिन ग्राप इस चीज को ग्रगर इन बिलों में जो ग्राप पास कर रहे हैं देखें तो मुझे शर्म ग्राती है जब मैं ग्राप की तक़रीर को सुनता हूं स्पेशल मैरेज लॉ की दफा २१ के ग्रन्दर, कि हिन्दुग्रों की जो शादी हुई थी उसके लिये यह तय कर दिया गया कि वह गवर्न होंगी क्रिश्चियन सकसेशन लॉ से । मैं इसे पसंन्द नहीं करता। यह हमारा ग्रकल व मजहब का दिवाला निकलने जैसी चीज है। इसके माने यह हैं कि हिन्दू कोड के सक्सेशन पर ग्राप का इत्मीनान नहीं है। ग्राप ऐसा बिल बनाइये जिसमें कि सब लोग मैरिज व सक्सेशन का जो ग्राप लॉ हिन्दुग्रों के लिये बना रहे हैं उसमें ग्राजायें। ग्रौर ग्रगर उसको काफ़ी न समझें तो उसमें तरमीम कर दें । ग्रगर सक्सेशन लॉ ठीक नहीं है तो कोई वजह नहीं है कि हम क्रिश्चियन लॉ की तरफ जायें। जब दफा २१ का हवाला हुग्रा था तो मैंने जिक्र किया था कि ग्राज के दिन क्रिश्चियन लॉ के मुताबिक ग्रौरतों को जो कुछ हिन्दुग्रों में ग्राजकल मिलता है उससे ग्रगर ज्यादा होता है, तो मैंने कहा था कि जब हम ग्रपना बिल पास कर देंगे तो क्रिश्चियन लॉ के मुकाबले ग्रौर मुसलिम लॉ के मुकाबले भी हिन्दू ग्रौरतों को जो हक़ मिलेगा वह उससे ज्यादा होगा ग्रौर यह ठीक है ।

मेरी निहायत ग्रदब से गुज़ारिश है कि जहां तक इस ग्रमर का ताल्लुक़ है, मिनिस्टर साहब इसको मुलाहिज़ा फ़रमाय।

ग्रापने इस बिल में एक नई चीज की है। डाक्टर ग्रम्बेडकर के बिल में जो प्रेफ़रेंशियल एयर्ज की लिस्ट थी, उसम "सन ग्रौर डॉटर ग्रॉफ़ ए प्रिडिसीज्ड डॉटर" का नाम नहीं था। ग्राप इस लिस्ट में से मैरिड डॉटर को निकाल दीजिय मैं ग्रनमैरिड डॉटर को नहीं निकालना चाहता हूं । मैरिड डॉटर को ग्राप कहीं ग्रौर हक़ूक दे दीजिये। यह कहां का इन्साफ़ है कि वह एज़ ए डॉटर भी सक्सीड करे ग्रौर प्रिडिसीज्ड सन्ज डॉटर या विडो के तौर पर भी सक्सीड करे। इससे तो ग्राप यह लिख देते कि सन-इन-लॉ भी एग्रर होगा ग्रौर सक्सीड कर सकेगा । इस बिल के मुताबिक तो एक लड़की ग्रपने खुसर को भी सक्सीड करेगी ग्रौर ग्रपने ग्राप को भी।

An hon Member: What about the husband?

पंडित ठाकुर दास भार्गव : लड़की का हस्बेंड कहीं एयर नहीं है। अगर आप ईक्वैलिटी के पीछे चलेंगे, तो आप बड़ी मुश्किल में पड़ जायेंगे । यहां पर ईक्वैलिटी का सवाल नहीं है । मेरा मत यह है कि इस वक्त जिस तरह की हमारी सोसायटी है, उसके मुताबिक़ ही हमको हक़ूक़ देने हैं। अगर आप ईक्वैलिटी के पीछे पड़ेंगे, तो सारा काम खराब हो जायगा । मैं आपको इस बिल के एक एक सैक्शन में इन-ईक्वैलिटी दिखा सकता हूं। जो हक़ूक़ मरद को दिये गये हैं, वे औरत को नहीं दिये गये हैं। क्लाज १० में लिखा है कि लड़के को एक शेयर मिलेगा और लड़की को आधा शेयर मिलेगा। यह क्यों रखा गया है? मुझे इस बिल के एक एक लफ्ज में इन-ईक्वैलिटी नजर आ रही है । इससे मेरा मतलब यह नहीं है—मैं नहीं चाहता— कि हिस्से में कोई ज्यादती या कमी हो। मैं तो सिर्फ यह बताना चाहता हूं कि इस बिल के हर एक लफ्ज में इन-ईक्वैलिटी है, जो कि मुनासिब नहीं है। मैं इतना तो कह ही दूं कि अगर आपने मेरी डॉटर को बाप की जायदाद में बेटे के साथ हक दिया तो देश में सख्त बेचैनी मच जावेगी, अफरा तफ़री होगी और हर कुनबा मुकदमेबाजी से तबाह हो जावेगा ।

दूसरा सवाल यह है कि औरतों की एस्टेट कैसी हो। मैं आपसे अर्ज करना चाहता हूं कि औरतों की लिमिटिड एस्टेट का वक्त गुजर गया है —खत्म हो गया है। पहले हम डरते थे कि औरतों के हाथ में जयदाद गई और उन्होंने जाया की, लेकिन अब इस किस्म का डर वाजिब नहीं है।

मुझे अफ़सोस है कि अब मेरे पास वक्त नहीं है। पिछली बार जब मैं हिन्दू कोड बिल पर बोला था, तो मुझे दो घंटे मिले थे और मैंने सब एतराज़ात पेश किए थे, लेकिन आज वक्त की कमी की वजह से मैं आधी बात भी नहीं कह सका हूं। हमें इस बारे में सोचना पड़ेगा कि पालियामेंट में रहते हुए हम कैसे अपने सारे पायंट्स को यहां पर रख सकते हैं। हर मौके पर, हर एक बिल और अमेंडमेंट के सिलसिले में, यही रोना रहता है कि वक्त नहीं मिलता है । या तो हम लोगों को ज्यादा वक्त दीजिए और या हम से पूछना छोड़ दीजिए । मरजी आवे सो कीजिये ।

डा० सुरेश चन्द्र : सभापति जी, इस बिल पर और इससे पूर्व हिन्दू मैरिज बिल पर बहुत बहस हुई है। मैंने उसको बड़े ध्यान से सुना है और उसे सुनकर मुझे बड़ा आश्चर्य हुआ है। यह बिल हिन्दू कोड बिल का तीसरा अध्याय है, इसलिए मैं समझता हूं कि यह आवश्यक है कि जब हम इसके बारे में — हिन्दू उत्तराधिकार बिल के बारे में—बहस करते हैं, तो हमारे दिमाग़ में वही बातें आती हैं, जो कि इससे पहले बिल के वक्त आई थीं। हमारे बहुत से माननीय सदस्यों ने बहुत से शास्त्रों के उद्धरण दिए—उन शास्त्रों के उद्धरण दिए, जिनको न उन्होंने पढ़ा है और न ही जिनके श्लोकों का वह ठीक उच्चारण कर सकते हैं। मैं दावे के साथ कह सकता हूं कि हिन्दू धर्म के शास्त्रों को मैंने बचपन से पढ़ा है, अध्ययन किया है और उनका मनन किया है और इस कारण मैं जानता हूं कि उन शास्त्रों में कहीं इस प्रकार के दकियानूसी ख्याल और बातें नहीं हैं।

हमारे भार्गव साहब ने सबसे आखिर में कहा कि ईक्वैलिटी होनी चाहिए, समानता होनी चाहिए। और वह समानता किस के लिए चाहिए? वह मानते हैं कि वह

समानता मरदों के लिए चाहिए। जब स्त्रियों के लिए समानता का सवाल ग्राया था, तो वह पीछे हट गये थे। ग्राज जब हम कहते हैं कि स्त्रियों को उत्तराधिकार मिलना चाहिए, तो वह कहते हैं उनको बराबर का हिस्सा मिलना चाहिए ग्रौर मरदों को समानता मिलनी चाहिए। इस पर मुझे बड़ा ग्राश्चर्य होता है।

पंडित ठाकुर दास भार्गव : ग्रापने मुझे ठीक समझा नहीं है। मैंने यह कहा था कि मैं इस मत का हूं कि जैसी हमारी सोसायटी है ग्रौर जैसी पोजीशन है, उसके मुताबिक ही फ़ैसला करना चाहिए। इस बिल में समानता नहीं है ग्रौर ग्रगर हम उसमें पड़ेंगे, तो हम ऐसे झगड़े में पड़ जायेंगे, जिससे निकलना मुश्किल हो जायेगा।

डा० सुरेश चन्द्र : ग्रगर हम उसी के मुताबिक चलते रहे ग्रौर कानून बनाते रहे, तो मैं समझता हूं कि हम कभी भी न्याय नहीं कर सकेंगे। हम न्याय उस वक्त कर सकेंगे, जब कि हम इस विषय पर गौर करें ग्रौर समझें कि किस को न्याय देना चाहिए ग्रौर किसको नहीं देना चाहिए। मैं समझता हूं कि हमारे बहुत से शास्त्र, पुराण ग्रौर स्मृतियां हैं, उनकी जो टीकायें हुई हैं, वे "गपाष्टिक" के सिवा कुछ नहीं हैं। यह बात हम जानते हैं। ग्रगर उन पुराणों के आधार पर कोई रीति-रिवाज चलते रहे हैं ग्रौर स्त्रियों के साथ ग्रन्याय होता रहा है, तो इस बीसवीं सदी में हम उस ग्रन्याय को ग्रौर उन रीति-रिवाजों को मानने के लिए तैयार नहीं हैं। मैं समझता हूं कि यह एक एक्ट ग्राफ़ जैनेरासिटी—उदारता का काम—होगा—न सिर्फ उदारता का, बल्कि न्याय का—कि हम स्त्रियों को वही ग्रधिकार दे दें, जो कि एक पुरुष को मिलता है।

इस बिल को लाने के लिए मैं पाटस्कर साहब को बधाई देता हूं, लेकिन साथ ही मैं यह कहूंगा कि हालांकि यह बिल बधाई देने के काबिल है, फिर भी उसमें बहुत सी ऐसी क्लाजिज हैं, जिनसे जो काम ग्राप लेना चाहते हैं, वह नहीं निकल सकेगा। मिसाल के तौर पर क्लाज ५ में लिखा है :—

The Act shall not apply to any joint family property...

ग्रौर भार्गव साहब ने उसका समर्थन किया है। उन्होंने कहा कि जो ग्राइडिया था जायंट फैमिली का, जो कि कानूनों में लिखा हुग्रा है, वह खत्म हो चुका है। वह ग्राइडिया था कामन पर्स, कामन मेस ग्रौर कामन वरशिप का। ग्राज न कामन पर्स है, न कामन मेस है ग्रौर न कामन वरशिप है। ग्राज कुछ भी नहीं है।

पंडित ठाकुर दास भार्गव: आज पूरा जायंट फैमिली है ही नहीं। ग्राज वह डिसइन्टेग्रेट हो चुकी है।

डा० सुरेश चन्द्र: आज जब हम कानून बनाते हैं कि सबके साथ समानता का व्यवहार हो, तो ऐसी व्यवस्था करते हैं कि जायंट फैमिली की लड़कियों को किसी प्रकार का ग्रधिकार न मिल सके। ग्राज भी कहीं कहीं पर जायंट फैमिली के रैमनेन्ट्स मौजूद हैं। उसमें ग्रगर किसी का एक लड़का है ग्रौर एक लड़की है ग्रौर उसके पास कई करोड़ रुपया है, तो वह सब लड़के का ही है, लड़की को कुछ नहीं मिलता है। इसलिए मैं समझता हूं कि जायंट फैमिली के बारे में जो यह क्लाज है, उसको निकाल देना चाहिए। मैं सिलेक्ट कमेटी से निवेदन करूंगा कि वह इस विषय पर गहराई के साथ विचार करे ग्रौर राव कमेटी की रिपोर्ट को ग्रच्छी तरह से पढ़ कर ऐसी व्यवस्था करे कि जायंट फैमिली की स्त्रियों को भी वही ग्रधिकार मिलें, जो कि दूसरों को दिए गए हैं।

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[डा० सुरेश चन्द्र]

श्री ठाकुर दास भार्गव ने एक्सेपशन्ज के बारे में जो कहा है, वह सही है। क्लाज ५ में बहुत सी एक्सेपशन्ज कर दी गई हैं, जैसे मद्रास मरुमकत्तायम् एक्ट, १६३२, वगैरह। मैं समझता हूं कि इस तरह इस बारे में कोई यूनिफार्मिटी नहीं आ सकती है।

इसके बाद भार्गव साहब ने कहा कि शेयर तो देना चाहिए, लेकिन वह अनमैरिड डाटर को देना चाहिए। मेरी समझ में यह बात नहीं आती कि अनमैरिड और मैरिड डाटर में भेद क्यों किया जाय। यह तो जीवन का एक एक्सिडेंट है कि एक घर में एक लड़का हो गया और एक लड़की हो गई। ऐसा तो नहीं है कि शास्त्रों ने बता दिया कि लड़का होगा या लड़की होगी और वैसी ही हो गया। यह तो लाइफ़ का एक्सिडेंट है। तो फिर क्या वजह है कि लड़के और लड़की में कोई भेद किया जाये। वेदों और शास्त्रों में लिखा है और हम रोज कहते हैं: सहनाववन्तु, सहनाभुनक्तु। चाहे आर्य समाज का मन्दिर हो और चाहे प्रार्थना समाज का, उनमें हमेशा समानता के उपदेश दिए जाते हैं। स्त्रियों के लिए यह कहा जाता है कि—

यत्र नार्यस्तु पूज्यन्ते, रमन्ते तत्र देवताः।

इसके बाद फिर मैरिड और अनमैरिड डाटर में फर्क क्यों किया जाता है? इसलिए कि यहां पर प्रापर्टी का सवाल है। दूसरी बातों में फर्क नहीं करना चाहिए, लेकिन यहां पर तो धन का मामला है। अगर किसी के पास पैसा है, तो वह लड़के को ही दे देता है, लड़की का तो सवाल ही नहीं उठता है। यह बात मेरी समझ में नहीं आती है। हमारे हिन्दू समाज में जो भी कुरीतियां इस समय हैं, वे हमारे शास्त्रों के मिस-इन्टरप्रेटेशन की की वजह से हैं। जो पंडित यहां पर बैठे हैं और जिस तरह से वे शास्त्रों की व्याख्या करते हैं वह ठीक नहीं करते। मैं मानता हूं कि उन्होंने शास्त्रों को पढ़ा जरूर है लेकिन जिस तरीके से वे इन का इन्टरप्रेटेशन करते हैं वह उसी तरह से गलत है जिस तरह से कि उनके अन्दर चोरों की गलत कथायें हैं। अगर वे अच्छी तरह से इन शास्त्रों को पढ़ें और उनको समझने की कोशिश करें तो उनको पता लगेगा कि जो पुराने ऋषि हमारे यहां थे उन्होंने इनका बहुत ध्यान से अध्ययन किया, मनन किया। जो उनके शिष्य हुआ करते थे वे अपना पूरा जीवन उनके चरणों में गुजार देते थे और एक विषय को लेकर उसका पूरा अध्ययन करते थे। यही वजह थी वे लोगों को ठीक रास्ते पर चला पाते थे।

जैसा कि पंडित जवाहरलाल नेहरू जी ने आज कहा कि जो डायानिज्म आज हिन्दू धर्म के अन्दर है उसकी वजह यह है कि हमारे ऋषियों ने तपस्या की थी और वह इसलिये नहीं की थी कि आज हम यहां पर दकियानूसी बातें करें। आज हमें शास्त्रों को दोष भी नहीं देना चाहिये। हमें समय के अनुसार बदलना होगा। आज जरूरत इस बात की है कि हम रूढ़िवाद को त्याग दें और आधुनिक रूप धारण कर लें। आज हमें आंखें खोल कर चलना है, आंखें बन्द कर के नहीं। अगर हम आंखें बन्द कर के चलेंगे तो हम समाज का कल्याण नहीं कर पायेंगे।

मैं यह भी अर्ज करना चाहता हूं जब यह बिल राज्य सभा के सम्मुख था और जब वहां पर इस पर बहस हो रही थी और जिन मैम्बर साहिबान ने राज्य सभा की बहस को पढ़ा है या उसको सुना है उनको मालूम होगा कि जितनी भी लेडी

मैंम्बर्स उस सदन में हैं उन सब ने इस बिल के बारे में एक आवाज उठाई। मैं समझता हूं कि इस सदन में भी जितनी लेडी मैम्बर्स हैं उन सब की एक ही आवाज होगी। यह दुर्भाग्य की बात है कि यहां पर ५०० मैम्बरों में से केवल २५ या ३० लेडी मैम्बर्स हैं। अगर आज इस सदन में ४०० लेडी मैम्बर्स होतीं और उनकी तरफ से एक ही आवाज आती की उत्तराधिकार हो तो मुझे विश्वास है कि एक भी पुरुष की यह हिम्मत न होती कि वह इस बिल को अपोज कर सकता।

इसलिये मैं आपसे कहता हूं कि आप रूढ़िवाद के जिस सिद्धान्त पर चल रहे हैं उसको आप छोड़ दीजिये। जो आज रुढ़िवाद की बात करते हैं मैं कहता हूं कि वे हिन्दू समाज को रिप्रिजेंट नहीं करते। मैं आपसे कहता हूं कि अगर आप इसके बारे में स्त्रियों की राय लें, बहिनों की राय लें, माताओं की राय लें तो उन सबका मत इसके हक में होगा। मैं अपनी ही मिसाल आप के सामने रखता हूं। मेरी मां बहुत पढ़ी-लिखि नहीं है लेकिन उसके दिल के अन्दर भी आज उन स्त्रियों, बहिनों और बच्चियों के लिये एक दर्द उठता है जिनके साथ की सदियों से बेइन्साफी होती आई है, जिनके साथ कि अन्याय होता आया है। मैं समझता हूं कि यह सब शास्त्रों की गलत व्याख्या, उनके गलत इन्टरप्रेटेशन ...

पंडित नंद लाल शर्मा : On a point of information Sir. वह कौन सी इन्टरप्रेटेशन का मेरे मित्र जिक्र कर रहे हैं जिसकी वजह से कि ऐसा होता है?

डा० सुरेश चन्द्र : आपको भी मौका मिलेगा और उस वक्त आप जो चाहें कह सकते हैं।

इसलिये मैं यह कहूंगा कि अगर घर के अन्दर एक लड़की हो और एक लड़का हो दोनों का बिल्कुल इक्वल शेयर होना चाहिये। हर एक चीज पर लड़के और लड़की का बराबर-बराबर अधिकार होना चाहिये। जितना शेयर एक लड़के का हो उतना ही एक लड़की का भी होना चाहिये। इसलिये मैं चाहता हूं कि सिलैक्ट कमेटी इस बात पर पूरी तरह गौर करे और इसमें कोई डिस्टिंकशन नहीं होनी चाहिये। मेल और फीमेल के अन्दर किसी प्रकार की डिस्टिंकशन नहीं होनी चाहिये। जिन डिसऐबिलिटीज से स्त्रियां आज तक सफर करती आ रही हैं वे डिसएबिलिटीज दूर होनी चाहियें।

इलीट्रेसी की बात यहां पर कही गई। मैं समझता हूं कि औरतों में जो इलीट्रेसी पाई जाती है उसके बारे में जवाब देने की कोई खास आवश्यकता नह है।

यहां पर नरक की बात भी की गई। कहा गया कि नरक में जाने से बचाने वाला पुत्र होता है। अगर यह बात शास्त्र में लिखी हुई है तो मैं कहूंगा कि ऐसे शास्त्र को हटा देना चाहिये और इसको रहने नहीं देना चाहिये।

आज इन शास्त्रों की गलत व्याख्या के कारण हिन्दुस्तान के अन्दर कई ऐसे परिवार हैं जो उजड़ जाते हैं। कई जगहों पर जब लड़की पैदा होती है तो लोग रोना शुरू कर देते हैं। कई कई जगह तो लड़की को मार भी दिया जाता है (हंसी)।

श्री वी० जी० देशपांडे (गुना): बचाओ बचाओ।

डा० सुरेश चन्द्र : यह हंसने की बात नहीं है। समय आयेगा जब आप जैसे सदस्यों को यहां से भगा दिया जायेगा। आप शास्त्रों का गलत इन्टरप्रेटेशन करके

[डा० सुरेश चन्द्र]

जिन को दबा रहे हैं समय आने वाला है जब वे आप को यहां से निकाल बाहर फेंकेंगे । वह समय जब कि ब्राह्मणों को पूछा जाता था निकलता जा रहा है। और मुझे विश्वास है कि १० साल के अन्दर अन्दर जितनी आज पिछड़ी हुई जातियां हैं इनकी गवर्नमेंट होगी, हरिजनों की गवर्नमेंट होगी और ब्राह्मणों की गवर्नमेंट नहीं होगी ।

Shri Sadhan Gupta (Calcutta South-East): Mr. Chairman, Sir, I could have selected many provisions of the Bill for welcoming and other provisions for criticising this Bill. I could have selected, for example, the provision that removes the distinction between divided and undivided son or between the childless woman and the woman who has a child or between the diseased person and the non-diseased person, physically defective person and the non-defective person for the purpose of inheritance. But, I am not going to do that today because my agreements and also some disagreements are with the fundamentals of the Bill itself. I can indicate just at the outset that my agreements are more extensive with the principles of the Bill than my disagreements. And, certainly, they are not agreements relating to some merely humanitarian provisions.

This Bill transcends mere humanism and concerns something much more important; it concerns the question of our social emancipation, of our social progress. Can a society progress when half of the society are reduced to the position of bondslaves? I think it is almost a truism that we accept that a society cannot progress in that state. But, what is the position of our society? In spite of all we say, all the glorious things we say about Hindu womanhoood, in spite of the comparisons we make with Sitas and Savitris, yet there is no denying the fact that the position of Hindu womanhood in society is more or less the position of domestic drudges. The reason is quite simple. When a person is doomed to be your economic bondslave, when a person has no separate economic existence, then his position only depends on the way in which his economic superior is prepared to treat him. This is what happens in our society. It may be that many women receive good treatment; many others receive bad treatment. But the determining factor is the outlook of man, the outlook that the man takes of the woman and the woman does not determine what treatment she is going to receive from her partner in society. This is an impossible position for society; this is a position which deters and hinders progress of society. This fact we have realised. We have realised this fact in India very early in the course of our movements. That is why we find that our effort for social emancipation of our womanhood has been proceeding hand in hand with our struggle for political emancipation. We did not wait till we achieved political freedom to work for the progress of our womanhood. Even in 1942 we had set up the Rau Committee and even before that efforts to emancipate our women economically had been proceeding.

Now, why were we so anxious for economic emancipation of women? I have said that a society cannot progress as long as woman remains a bondslave; It is precisely the economic position of woman that will determine whether she will remain a bondslave or not. If a woman has her independent economic existence, then it is not possible to subject her to social oppression with that amount of ease with which it is possible to subject her to that oppression if she has no independent economic existence. I have seen case after case when a woman whose husband has quarrelled with her and then married a second wife and who had to go away in indignity, had to go back, had to solicit her husband's permission to remain in

the family with the co-wife, because otherwise she has no other way to live in society. Her brother would not accept her; her father would not accept her; none of her other relations would accept her, because she is a drag or burden on them.

That is why economic emancipation is the most important part of social emancipation of women. Succession may not be the whole of economic emancipation. We know that to obtain full economic emancipation, we have to remove the social prejudices against women following certain vocations. We have to provide them with equality of opportunity, but there is no gainsaying the fact that the rights of succession is at least 90 per cent. of the economic emancipation, and the other elements would be largely influenced by the fact that the woman has the right to succeed to the property of her father or other relations. In this respect the Bill is a step forward, although many Hindu women had by custom the right of inheritance. In Bombay they had by custom the right to get even an absolute share, but still in the majority of cases in the case of a vast number of Hindu women, they were denied the right of inheritance when there was a corresponding male issue. In this respect the Bill is a great step forward, because it is for the first time that a vast section of Hindu society, namely the women, have been brought on a par with men in the matter of the right of inheritance, and inasmuch as it does this I as a Communist and as a progressive, welcome it.

At the same time I must point out that the Bill is a halting, faltering measure. It has made certain kinds of exclusions which will cut at the very root of our abjective. Sir, what do we seek to do? Whom do we seek to emancipate? I take it we seek to emancipate a vast majority of Hindu women. But what do we provide in the Bill? We have provided that Mitakshara joint family property is excluded from the purview of the Bill. Women will succeed to everything except Mitakshara joint family property. Now, I think that about 80 per cent. of our society is governed by the Mitakshara law. There is the institution of joint family property and so prevalent is that institution that Hindu law raises a presumption that a family is joint. In this state of things if we exclude the Mitakshara joint family property we run the risk of excluding a vast section of Hindu women, probably the vast majority of Hindu women from the benefits of this particular Bill.

The hon. Minister has stated that the Mitakshara joint family is a crumbling institution. Every joint family must be a crumbling institution when we have a certain economic condition. The difficulty with Mitakshara joint family is that however crumbling it may be, it has a way of regenerating itself. The father may separate from the joint family and get his separate property. But as soon as he dies in the hands of his son, it again becomes an ancestral property. Unless we find a way either by abolishing this conception of ancestral property, or in any other way to give the female members a share in that ancestral property, we run the risk of excluding our womenfolk and perpetuating their present position, even if the joint family may be a crumbling institution.

I know there are difficulties. When we make a change in the law of property; many difficulties, many complications must necessarily arise. But those complications must not be a hindrance to our legislating for a much-needed social reform. I am sure that if we have determination and if we do not want to play second fiddle to social prejudices, then we can find a way out for giving our women-folk a right to property—among people who are governed by the Mitakshara school of law, whether by the abolition of the joint family or by making some other provision—that will have to be considered by the Select Committee, and I recommend it to the Select Committee for that purpose.

[Shri Sadhan Gupta]

The hon. Minister has said that the Bill has put men and women on an equal footing. Is this claim absolutely justified? I agree, as far as it provides for absolute property of women, as far as it removes a principle which has now become obnoxious that women take a limited estate, as far as it puts certain widows in the shoes of their husbands, it is certainly a great step forward. It has put men and women on a par. At the same time, I must regretfully say that the Bill contains the fundamental assumption, the Bill proceeds on the fundamental assumption that women are inferior to men in the matter of inheritance. This assumption of inferiority which the Hindu law makes, remains in the Bill. We still provide in the Bill that a woman has to get not an equal share, but half the share of a man. I would any day prefer the recommendation of the Select Committee in this matter and ask the Minister and the other Members to revise this provision in the Joint Committee, to which this Bill is going.

Pandit Thakur Das Bhargava made a point that it is difficult to give a married daughter a share because she goes to another family and also difficulties will crop up. I have not the time to go into it in details. If I had the time, I could have given a convincing answer. I will only give a brief answer today. I will say this. It may be that in several cases, in many cases, difficulties will crop up. When you are making such a fundamental departure from the established economic notions of society, when you are making such a fundamental departure in the law of devolution of property, some amount of hiatus is inevitable. This should not deter us from proceeding in our way, if we think it to be progressive. After all, in the course of a generation or so, that hiatus will resolve itself, and the ideas of society will conform themselves to the new conditions that we create and in that way we will be able to get over the little conflicts and little difficulties that this kind of a change may create. I would in conclusion urge upon the Joint Committee to remove all impediments to equality between the male and the female, to remove all impediments to equality in the matter of succession as well as the impediments to equality in the matter of sharing of the property inherited. I would urge upon the Joint Committee to do away with the exclusion of the *Mitakshara* joint family, and to devise ways and means in such a way that the *Mitakshara* joint family does not stand in the way of the rights of succession and inheritance to a vast number of Hindu women in our society.

श्री नन्द लाल शर्मा : करुह कुलिशै-
र्द्विषतां चरणाम्बुजनखरकान्तिभिर्भंजताम् ।
हृदयग्रन्थिर्मिन्दन्मनसिनृसिंह समुल्लसतु ।।

माननीय सभापति महोदय, हिन्दू विवाह विधेयक हिन्दू समाज के सिर पर जबर्दस्ती लादा गया है। अब यह हिन्दू कोड की दूसरी किस्त हमारे सामने उपस्थित है। जैसा मैं पहले कह चुका हूं, १२, १३ वर्षों तक हिन्दू कोड का हिन्दू समाज ने जिस भयंकरता से विरोध किया, तीव्र विरोध किया, उसको इस संसद के माननीय सदस्य अच्छी तरह से जानते हैं। इसके बाद भी उनके सिर पर यह कानून जबर्दस्ती लादा जा रहा है। इस समय जो यह हिन्दू उत्तराधिकार विधेयक है, उसके अन्दर यद्यपि दोषों का वर्णन, जब उसका वास्तविक रूप बन कर आवेगा, तब मैं करूंगा, फिर भी जहां जहां उसके सिद्धान्तों से मेरा प्रधानतः विरोध है, उसको मैं प्रदर्शित करता हूं।

पहली बात यह है कि वस्तुतः हिन्दू जाति के हिन्दू ला को जिन को प्राचीन शास्त्रों ने और उनकी परम्पराओं ने स्वीकार किया हुआ है, इस विधेयक में

कहीं स्वीकार नहीं किया गया। मुख्यतः मिताक्षरा और दायभाग, दो हिन्दू धर्म शास्त्रों को भारतवर्ष में चलाने की प्रणाली प्रचलित है। बंगाल के सभी क्षेत्रों में दायभाग के और शेष भारत में मिताक्षरा के, याज्ञवल्क्य स्मृति के भीतर जो निबन्ध रूप से, टीका के रूप से आज हैं, समस्त आचार और व्यवहार का जहां तक सम्बन्ध है, सिद्धान्त को ही रक्खा गया। जैसा मैं आगे चल कर बताऊंगा हिन्दू जाति के लिये मुसलिम ला को हिन्दू लॉ के ऊपर थोपने का प्रबन्ध किया गया। मेरा यह दृढ़ विश्वास है। परसों हमारे श्री पाटस्कर यह कह रहे थे कि एक दिन वह था जब कि खोजा और कुचिममन सन् १९२९ में जबर्दस्ती मुसलिम शरियत ऐक्ट के अन्दर लाये गये। आप भूले न होंगे कि जिस वक्त कुचिमेमन और खोजाओं ने इस का विरोध किया था, उस वक्त उन पर हिन्दू ला लागू होता था। वह हिन्दू ला से गवर्न थे। उनको जबर्दस्ती खींच कर मुसलिम ला में लाया गया और उन पर हिन्दू ला क्यों लागू होता था यह भी उन्होंने बताया। पंजाब के अन्दर जैसा कि श्री भार्गव ने कहा कस्टमरी ला चलता था और क्या हिन्दू और क्या मुसलमान, सिकन्दर हयात खां और खिजर हयात खां टिवाना, जिन की बड़ी-बड़ी फैमिलीज हैं, सब पर हिन्दू ला लागू होता था, कस्टमरी ला के हिसाब से, मिताक्षरा ला के हिसाब से सब कार्य होता था। मिताक्षरा सिस्टम का, जहां जायंट फैमिली सिस्टम माना जाता है, जहां पुत्र का पिता की प्रापर्टी पर जन्मसिद्ध अधिकार है, एक गुण यह है कि पिता को, एक पुत्र के रहते हुए, चाहे वह माता के गर्भ में ही हो, बाहर अभी न आया हो अपनी प्रापर्टी को बिक्वीथ करने, विल करने या बेचने का कोई अधिकार नहीं था। २१ बरस बाद, आवाज उठती है, ला कहता है :

"मुश्तरी होशियार बाश"

खरीदने वाले को इस बात का ध्यान रखना चाहिये कि उसके पीछे कोई एग्रर तो नहीं है, कोई उत्तराधिकारी तो नहीं है जो बाद में उठ कर यह आवाज दे कि इस जायदाद का मालिक मैं हूं, मेरे पिता को इस जायदाद के देने का कोई अधिकार नहीं था। आज आप उस जन्मसिद्ध अधिकार को मिटाने का प्रयत्न कर रहे हैं। लोकमान्य तिलक क्या, गोखले क्या, बाबू पुरुषोत्तम दास टंडन क्या, और दूसरे जितने भी राष्ट्रवादी लोग हैं सब अंग्रेजों के साथ युद्ध करते हुए कहते थे: स्वराज्य इज अवर बर्थ राइट। मैं कहता हूं कि वास्तव में हिन्दू ला को छोड़ कर बर्थ राइट, जन्मसिद्ध अधिकार की भावना, विश्व में किसी दूसरी व्यवस्था में या कानून में नहीं है। उस बर्थ राइट को आप देश से निकाल कर यह कहते हैं कि यदि कोई इन्टेस्टेट मर गया तो उसकी प्रापर्टी दो तरह से डिवाल्व करेगी आप यह समझ लें कि आपने डाइवोर्स ऐलाऊ कर दिया, स्पेशल मैरेज ऐक्ट है, डाइवोर्स है, उसके बाद भी जो पिछली संतान है वह विरोध करना चाहे और आप प्रापर्टी को बिक्वीथ कर दें या विल कर दें या किसी ढंग से हटा दें तो उन बच्चों को क्या अधिकार रहेगा। आपने प्रापर्टी का ही नाश नहीं किया, आपने उन बच्चों का भविष्य भी नाश कर दिया। अगर किसी स्त्री के साथ पुरुष का पापपूर्ण व्यवहार हो जाये और वह अपनी पत्नी को तलाक दे दे और दूसरी स्त्री के बच्चों को अपनी प्रापर्टी का अधिकार देने वाला हो, तो ऐसी परिस्थिति में इस हिन्दू समाज की बहुत बड़ी हानि होने वाली है। श्री सुरेश चन्द्र ने शास्त्रवादियों को

[श्री नन्दलाल शर्मा]

दकियानूसी कहा किन्तु वे हमारे बन्धु हैं हम उनका आदर करते हैं,

"आक्रुष्टलं कुश : वदेत्"

हम लोग ईश्वर को मानते हैं, भगवान को मानते हैं, गाली सुन कर भी दूसरों के लिये कल्याण की भावना रखते हैं। हमें चाहे जितना बुरा भला कहा जाये, हम भी युक्ति को स्वीकार करते हैं किन्तु युक्ति को भी हम शास्त्र के बल पर तो जरूर कहते हैं क्योंकि हम समझते हैं :

"मतयो यत्र गच्छन्ति तत्र गच्छन्ति वानराः।
शास्त्राणि यत्र गच्छन्ति तत्र गच्छन्ति ते नराः॥

4 P.M.

जहां तक बुद्धि जाती है, वहां तक तो बन्दर भी जा सकता है परन्तु

शास्त्राणि यत्र गच्छन्ति तत्र गच्छन्ति ते नराः॥

अर्थात् जहां तक शास्त्र पहुंचता है, वहां तक जो जाता है, वह मनुष्य है। पशु बुद्धि तो सब में विद्यमान है। हम शास्त्र को प्रमाण मानते हैं, लेकिन तर्क और बुद्धि के विरुद्ध नहीं हैं। यह भी स्पष्ट है कि हम स्वतंत्र बुद्धि और तर्क को बुद्धि और तर्क नहीं मानते हैं—जिसके पीछे शास्त्र का आश्रय नहीं है और जो उच्छृंखल हो कर चलती है, हम उसको नहीं मानते हैं।

"श्रुतिमतस्तर्कोऽनुसन्धीयताम्"

जो उच्छृंखल युक्ति के आधार पर चलती है उसका त्याग कर के वेद और शास्त्र के अनुकूल –वेदोदित —बुद्धि का प्रयोग करना चाहिए।

यहां पर आपने प्रश्न उठाया माताओं की स्लेवरी का। हम पूछते हैं कि अगर आप किसी माता के पुत्र हैं, तो क्या हम आकाश से गिरे हैं या पृथ्वी से उत्पन्न हुए हैं। सम्भव है कि हमारे घर में पत्नी न हो, बहिन न हो या लड़की न हो, परन्तु क्या हमारे घर में मां भी होगी या नहीं? अगर हमारी माता चाहे, तो क्या एक ही क्षण में वह हमारा गला मरोड़ कर हम को समाप्त नहीं कर सकती? आप माता और बहिन का नाम ले कर जनता को धोखा देना चाहते हैं—अपनी स्वार्थ-सिद्धि करना चाहते हैं। वह माता पिता के घर से सम्पत्ति लेकर पति के घर जाती है—पिता का घर मिटे या रहे, हमको इस बात की चिन्ता नहीं है, पिता का घर मिटने दो। यदि घर की प्रापर्टी खत्म होती है, परन्तु बहिन का कुछ भी लाभ होता है तो हम उसको स्वीकार करते हैं। लेकिन वह बहिन जिसकी एक भी ननद होगी जितनी प्रापर्टी लेकर आयेगी उससे दुगनी प्रापर्टी नहीं तो उतनी प्रापर्टी तो अवश्य उसकी ननद लेकर चली जायेगी तो उसके हाथ में क्या आयगा ?

"Right hand money come, left hand money go."

अगर प्रापर्टी ज्यादा चली गई तो घ के सब लोग गाली देंगे कि कैसी मनहूस लड़की आई है पचास हजार आया है और गया है एक लाख । इसलिए मैं कहना चाहता हूं कि श्री भार्गव के सुझाव में बड़ा बल है। हम यह नहीं कहते कि स्त्रियों को कोई प्रापर्टी न दो। पति की सम्पत्ति की वह पूर्ण अधिकारिणी और स्वामिनी हो, यह हिन्दू और हिन्दू समाज का नियम है। अगर पति राजा है और किसी रंक-कंगाल की वह कन्या ब्याह कर ले आता है तो वह कन्या रानी बन जाती है। अगर पति सेठ है तो कन्या आते ही सेठानी बन जाती है। लेकिन अगर पति साधू है और गरीब है

तो कन्या जाते ही गरीब बन जाती है । यह स्वाभाविक है। जैसे जल जल में जा कर मिल जाता है वैसे ही पत्नी आकर पति में मिल जाती है—उसके स्वरुप में लीन हो जाती है। अतएव पति की प्रापर्टी में उसका स्वामित्व मान लेने में किसी को क्या आपत्ति हो सकती है? किन्तु अगर आप हिन्दू जाति और समाज को विश्रृखंल और छिन्न-भिन्न करना चाहते हैं तो कर लीजिए, हमने जो कुछ कहना था, वह कह दिया है ।

मैं समझता हूं कि इस विचित्र ला को सबसे पहले बनाने वाले अम्बेदकर साहब ही थे। हमारे पाटस्कर साहब इस बच्चे को जन्म देने वाली अन्तिम माता हैं । इसको जन्म देने के लिए सबसे प्रथम गर्भ धारण किया सर सुल्तान अहमद ने। उसके बाद गर्भ धारण किया राव साहब ने ।

श्री रघुनाथ सिंह (जिला बनारस-मध्य) : क्या पुरुष भी गर्भ धारण करते हैं ?

श्री नन्द लाल शर्मा : यह इस बिल का गर्भ है ।

इसके बाद गर्भ धारण किया अम्बेदकर साहब ने और फिर विश्वास साहब ने और उस बच्चे के जन्म-दाता हैं पाटस्कर साहब ।

पिण्डदोंशहयर: स्मृत :

अर्थात् पिण्ड देने वाला ही उत्तराधिकारी माना गया है। अगर सुल्तान अहमद हिन्दू रीति-रिवाज, सदाचार और शास्त्र को न जानें, तो कोई दुख नहीं था और अगर अम्बेदकर साहब को इस विषय में न पता हो, तो कोई कष्ट नहीं था, किन्तु मुझे अचम्भा होता है जब आप इस बिल में यह लिखते हैं :

17. General Rules of succession in the case of female Hindus.—

(a) firstly, upon the children, including the children of any pre-deceased child:

(b) secondly, upon the husband;

(c) thirdly, upon the mother and father.

दक्षिण भारत के व्यवहार तो मैं नहीं जानता हूं, परन्तु उत्तरी भारत में जिस गांव में कन्या दी जाती है, उस गांव का पानी भी नहीं पिया जाता है। परन्तु इस बिल में उन्हीं लोगों के लिए यह व्यवस्था की गई है कि कन्या के मरने के बाद उसकी जायदाद का मालिक उसका पिता होगा, माता होगी, मामा होगा और मौसी होगी और भाई होगा । हिन्दू रीति-रिवाज को न जानने का यही फल है ।

Shri U. M. Trivedi (Chittor): Shame Shame.

श्री नन्द लाल शर्मा : Fools rush in where angels fear to thread.

देवता भी जहां जाने से घबराते हैं, मूर्ख वहां भी पहुंच जाते हैं ।

Pandit D. N. Tiwary (Saran South): Is it parliamentary?

श्री नन्द लाल शर्मा : माता पिता को जहां कन्या की सम्पत्ति में अधिकार दे दिया गया है, वहां दुर्भाग्य ऐसा है कि उनको पुत्र की सम्पति से वंचित कर दिया गया है। शिड्यूल में क्लास १ में पहले पुत्र है, फिर विडो है, फिर लड़की है, फिर लड़के का लड़का या लड़की है, फिर लड़की का लड़का या लड़की है, फिर लड़के की विडो है, इत्यादि इत्यादि। परन्तु पिता और माता को क्लास २ में रखा गया है। इस में बिल्कुल मुसलिम ला को रख दिया गया है। आप सोचते नहीं हैं कि यदि वृद्ध माता-पिता का लड़का मर जाता है, तो कोई दूसरा ही आदमी आ कर उस जायदाद को ले लेता

[श्री नन्द लाल शर्मा]

है और माता-पिता निराश्रय कर के निकाल दिए जाते हैं। आप हिन्दू जाति की रक्षा करने वाले नहीं हैं, उसका सर्वनाश करने वाले हैं। आप फिर इसकी तरफ ध्यान दें। आप कहते हैं कि हम हिन्दू जाति की रक्षा के लिए हिन्दू ला बना रहे हैं, हिन्दू ला की यूनिफिकेशन कर रहे हैं, हिन्दू ला को एक रूप देने जा रहे हैं, परन्तु इस यूनिफिकेशन का विरोध डाक्टर डी० एन० मित्तर ने किया, जो कि राव कमेटी के सदस्य थे।

भारत इंगलैंड जैसा छोटा-मोटा देश नहीं है। इंगलैंड हमारी एक जेब में आने वाला है। छत्तीस करोड़ व्यक्तियों का यह देश एक महाद्वीप के सदृश है, जिसमें भिन्न रीति-रिवाज चल रहे हैं। आप सबको पकड़ कर एक ही लाठी से हांकना चाहते हैं। अगर आपको कम्युनिज्म की बीमारी लगी हुई है कि सब को काट-पीट कर एक समान बनाना है, तो मुझे कोई एतराज नहीं है। वह तो कहते हैं कि सब को काट-पीट कर बराबर कर देना है और इस तरह साम्यवाद लाना है, अगर साम्यवाद आयेगा, तो महाप्रलय आयेगी और फिर हमारी मौज बन आयेगी, । आपने यह कैसा यूनिफिकेशन किया है कि जम्मू और काश्मीर को छोड़ दिया है ? क्या जम्मू और कश्मीर में रहने वाले हिन्दू हिन्दू नहीं हैं ? क्या वे मेरे भाई नहीं हैं ? पूर्वी बंगाल में बैठे हुए हिन्दू जब कल धकेल कर यहां भेज दिए जायेंगे, तो उन पर आपका यह हिन्दू ला लागू हो जायेगा और जब वे वापिस चले जायेंगे तो दूसरा ला लागू हो जायेगा । इसके साथ ही आपने मद्रास और मालाबार में चलने वाले मरु-मक्कतायम् एक्ट के अधीन आने वाली प्रापर्टी को इसमें से निकाल दिया है। आप यूनिफिकेशन का प्रयत्न तो कर रहे हैं, परन्तु आप यूनिफाइंग स्पिरिट को—एकता देने वाली शक्ति को—बीच में से निकालना चाहते हैं। आप कहते हैं :

"Joint family system is in its crumbling stage."

मैं आपसे कहता हूं कि जायंट फैमिली सिस्टम तो वैसा है जैसे ब्रह्म तत्व। अगर आप उसको नष्ट करने का प्रयत्न करेंगे तो वह हजारों ढंग से बढ़ेगा। अगर एक पुत्र क्लर्क बनने, नौकरी करने कहीं भी जायेग तब उसके घर में उसकी स्त्री के गर्भ में बच्चा आयेगा तो एक दूसरी जायंट फैमिली क्रीएट हो जायेगी और जब तक उसका पुत्र बड़ा नहीं होता, जब तक उसका विवाह नहीं हो जाता, तब तक वह जायंट फैमिली नहीं टूटती। जब वह अलग हुआ उसका विवाह हुआ और उसकी स्त्री को गर्भ ठहर गया, तो फिर एक और जायंट फैमिली बन गई। यह तो वह परिस्थिति है जिसमें कभी नाश नहीं होगा। आप केवल हिन्दू ला को मिटाने का प्रयत्न कर रहे हैं। मैं प्रवर समिति के सदस्यों से इन बातों की ओर ध्यान देने की प्रार्थना करता हूं।

यहां पर कहा जाता है कि हम दकियानूसी बातें करते हैं और शास्त्रों को गलत इन्टरप्रेट करते हैं। हम तो कहते हैं कि सब चीजों को हटा कर के एक ओर धर दो, हमें इसमें कोई एतराज नहीं है, लेकिन आप यह जरूर देखें इससे हिन्दू देवी का भला हो, हिन्दू माता का कल्याण हो। मैं आप से निवेदन करता हूं कि जैसा कि मैं ने पहले भी कहा है एक पिता मर जाता है और अपने सिर जो कर्जा चढ़ा होता है उसकी जिम्मेवारी भी उसके पुत्रों पर आ जाती है । उसके पुत्र अपनी बहनों का विवाह ऋण लेकर भी

करते हैं और किस तरह से वे उस कर्ज को दे पाते हैं यह आप सब जानते हैं। इतना ही नहीं उस बहिन के पुत्रों और पौत्रों के विवाह की जिम्मेवारी भी उन पर ही आ पड़ती है। आप यहां पर करोड़ों और लाखों की बातें करते हैं, लेकिन आप गांवों में जा कर तो देखें, वहां पर उन लोगों को २० रुपये देखने को नहीं मिलते।

अब आप प्रापर्टी कि हिस्सों की बात करते हैं। अगर यह मान लिया गया तो आप जानते हैं क्या होगा एक मकान के टुकड़े हो सकते हैं। भाई अपनी बहन से कहेगा तुम्हारा इस प्रापर्टी में उतना ही हिस्सा है जितना कि मेरा है, तुम भी मौज करो, मैं भी मौज करता हूं।

Mr. Chairman: Mr. Sharma: **Your** time is over.

Shri Nand Lal Sharma: One minute more, Sir.

अन्त में मेरी इतनी ही प्रार्थना है कि आप ऐसा विधान बनायें जिसमें हिन्दू देवी की रक्षा हो, हिन्दू माता की रक्षा हो और जिसमें देश का भला हो।

Shri Pataskar: May I make a statement? I have been able to get about 25 copies of the Rau Committee's Report and I have asked them to keep them in the library. If hon. Members want, they may go and refer to them there.

Shri Tek Chand: I wish to offer my comments and when doing so, I wish to eschew the two extremes. There have been almost storm and thunder, vehemence, sentiments and emotions on both. This measure has to be approached neither from the point of an idolatrous worshipper nor from the viewpoint of an iconoclastic critic. My feelings towards this measure are mixed. It is, to a restricted extent, an advance. The long due claim of the daughter is receiving recognition, but in certain matters it is also retrograde. I would counsel to my learned colleagues who are going to adorn the Joint Committee circumspection and analysis. It has been my regrettable experience that the best intentions are very often in our bills couched in clumsy language, clothed in words which fail to carry out the intent, and the result is confusion and bewilderment for those who are called upon to administer the law in a court of law, either as judges or as persons advancing arguments from one side or the other.

There are a few features to which I wish to rivet the kind attention of the hon. Minister. I shall give one example. That is with regard to clause 27. In your clause 27, in your magnanimity, you say that an unchaste wife is disqualified from inheriting the property of her husband. That is understandable. That is in consonance with all laws of decency. But look at your proviso. The proviso says:

> "Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties....".

I am simply amazed at this proviso. I wish to give you two illustrations. I do hope the hon. Shri Pataskar will appreciate what I am about to say. You say that a woman, even if she is an unchaste woman, will not in law be deemed to be unchaste, unless she has received the stigma of unchastity in a proceeding in a court of law in which she was a party....

Pandit Thakur Das Bhargava: Along with the husband.

Shri Tek Chand: Is it possible? Take the first illustration that I shall give you. Mr. A, the husband of Mrs.

[Shri Tek Chand]

A, goes to jail because he has hit hard and caused grievous injury to the paramour of his wife, Mrs. A. In a court of criminal law where Mr. A is being prosecuted for having caused grievous hurt, there will be witnesses forthcoming who would say that he did so and he caused grievous hurt to the paramour because his wife and the paramour were in *flagrante delicto*. The woman who is not even a witness, who cannot be a party in a criminal case, that woman, who is instrumental in getting her husband to jail because he wanted to protect her honour, will, according to the interpretation of your clause 27, be deemed to be chaste because her unchastity has not been upheld in a court of law where she was a party Fancy examine it.

Then take the second illustration that I give you. In a case in which a wife petitions for divorce—and now thanks to the Bill that has been passed you will get divorces galore—in such a case where the wife petitions for divorce against her husband on the ground that her husband was carrying on with somebody else's wife, Mrs. B, the divorce court after going into the evidence comes to the conclusion that Mrs. A, the petitioning wife has upheld, substantiated, her contention, namely, that her husband was carrying on with somebody else's wife, Mrs. B. There is the stigma of the court, there is the decision of the court, there is the conclusion of the court, after the entire evidence has been examined; but when Mr. B. is going to die, according to your law, Mrs. B, who had broken one marriage, who had been condemned as co-respondent, Mrs. B. who was responsible for ruining a family, in your eyes, is not an unchaste woman to be disqualified from inheriting the property of her deceased husband. Here is an anomaly. I have given you two cases, and I have no doubt that my other hon. friends will be in a position to multiply similar cases of injustice, not only of injustice, but even of complete negation of logic.

Then, kindly proceed to clause 28. A widow is disqualified from inheriting the property, if she remarries. That is understandable. But chastity is not a qualification that you expect from her according to this law. A young widow may be aided and abetted by her parmours. The paramours will take undue advantage of her weaknesses of the flesh; and at the same time those paramours would aid her and abet her and instigate her to get the property of her deceased husband, to which she has forfeited all title or claim, having regard to all rules of decency. But according to your law such a woman is not disqualified.

One has only to scrutinise your Bill with a careful eye; one has only to analyse the Bill in order to discover a number of flaws. Then, there is a conflict raging in the House, whether female relations should get a life estate, a life interest, or they should be made absolute owners. The distinction between life interest and absolute ownership is that in the former case the holder of the life interest is entitled to enjoy the income or the use of the property without permission to alienate the property except in cases of absolute necessity, whereas absolute owner can destroy the estate, and can dispose of it as he fancies.

Please remember that this imposition of life estate so far as female heirs were concerned was really conceived as a protective measure. And I would counsel the hon. Minister to at least advert to numerous decided cases in the high courts, in order to find out that in the case of alienation by females, invariably there has never been any necessity; it has been wanton extravagance, reckless cases of reckless waste, and prodigality that have been responsible for alienation. Therefore it was the wisdom of the laws which desired to protect the women that whatever corpus she is going to inherit, she may have it, she may have the corpus, enjoy the

corpus, enjoy the income—that is what is called usufructuous (*usus* as well as *fructus*, the use of the property as well as the fruit of the property), and you may even give her a larger share—but her interest shall be confined only to a life interest, for thereby you will really be doing good to the female heirs. That is a matter worthy of examination.

My next suggestion is that you may possibly find a *via media* between absolute ownership and a life estate. The *via media* I suggest is that if a female heir decides to alienate her share by selling it up or by mortgaging it, let the right of pre-emption be given to the male heirs. Supposing a father leaves a certain property to one son and two daughters, the share of the two daughters will be half, and the share of the son will be half. Let us assume that the property is one house, and one of the daughters says, I propose to sell my one half share to a stranger. Under your present Bill, she can do so with impunity. Will it be too much to amend it to say, yes, she can sell it, but the first offer must be made by her to her brother. If her brother is willing to purchase that share of hers, let him be the pre-emptor; and if he declines, then of course, let her sell it at the best market value available. Here is a *via media* that is worthy of pursuit.

Another suggestion I wish to make is in regard to the case of a married daughter but issueless. That case is worthy of closer scrutiny. There seems to be an attitude that you tar everybody with one and the same brush. Sometimes by doing that, you are not introducing uniformity. Take, for instance, the case of a daughter who has been married, and who, when her father dies or when she inherits, has no issue. Suppose after having enjoyed that property she dies, and she dies issueless. The result in such a case of an issueless daughter dying will be that her husband who may have by now perhaps married another woman is going to have a share in his ex-father-in-law's property. In such a case, why should you not have the law of *revertendo?* That is to say, if on the death of the daughter, it is discovered that she has no issue, then whatever property she has, and which remains undisposed of—which has been inherited to her from her deceased father—should revert to the immediate heirs of her father rather than go to the strangers or to the co-wife etc.

There are numerous suggestions one could make, provided there was inclination on that side to receive them. My fears are that we are apt to be swept off our feet by sentiment; and sometimes, allowing our hearts to govern our heads instead of our heads governing our hearts, we are apt to make laws which in their performance and in their enforcement are going to create cases of real and genuine hardship.

Regarding joint property, I can compliment the framers of this Bill that it was wisest that it has been excluded. Please remember that joint property is a thing with respect to which a person has no right of alienation. I do not think I will be far wrong if I were to say to a restricted extent, in the case of a joint Hindu family, every coparcener is virtually the holder of a life interest. Therefore, there is no distinction. A member of a joint Hindu family cannot dispose it of; it is because of the principle of *jus accrescendi*, the right of survivorship: the joint Hindu individuals may live or die in that family, but the joint family goes on. And from the moment of conception, from the time that a child is *en ventre sa mere*, he has got a right. Similarly, the moment there is death intervening, the survivors receive it. There is no question of *testamenti factio* about it. There is no right to make a will with respect to joint family property. Therefore, it is wise, it is proper, and it is meet that joint family property has been excluded.

Mr. Chairman: The hon. Member's time is up.

Shri Tek Chand: I am grateful to you for this opportunity you have given me.

Mr. Chairman: If any hon. Member has got any suggestions, he may send them to the Select Committee. The Select Committee will consider them.

Shri Tek Chand: I have no desire to add to the load of the wastepaper basket.

Mr. Chairman: Now, Babu Ramnarayan Singh.

Shri Raghavachari (Penukonda): I request you to give me a chance.

Mr. Chairman: I shall try. I think I can give you a chance. The House will go up to 6 p. m. today.

Shri Raghavachari: This is an important Bill, and yet sufficient time has not been allotted for this; they want to rush through the whole matter. Its importance lies in the fact that it affects the interests of..

Mr. Chairman: I think I can give you some chance. Your name is here in the list. I shall give you some time. But others also should be given a chance.

बाबू रामनारायण सिंह (हज़ारी बाग पश्चिम) : सभापति महोदय, मुझे बोलने का अवसर बहुत कम मिलता है । आज आपने कृपा कर के यह अवसर मुझे प्रदान किया, इसके लिये मैं आपको धन्यवाद देता हूं । बोलने का अवसर तो कम मिलता है, लेकिन बैठे बैठे मैं देखता रहता हूं कि इस सदन में क्या होता रहता है । हमारे देहात में एक कहावत है, 'बैठा बनिया क्या करे इस कोठी का धान उस कोठी में भरे" । मुझे ऐसा मालूम होता है कि इस सरकार को कोई काम नजर नहीं आता, तो वह फ़िज़ूल फिज़ूल काम करती रहती है ।

सभापति महोदय, मानव समाज के सम्बन्ध में कोई यह नहीं कह सकता कि यह समाज कब से चला आ रहा है । हिंदू समाज के बारे में भी कोई नहीं कह सकता कि वह कब से चला आ रहा है । इस बात का दावा किया जा सकता है कि जब से यह पृथ्वी है, चांद है और सितारे हैं, तब से ही मानव समाज और हिन्दू समाज जीता है और जागता है और अपने नियम के मुताबिक चल रहा है । सभापति महोदय, अगर आप भी ग़ौर करेंगे और प्रत्येक सदस्य ग़ौर करेगा कि स्त्री और पुरुष में इस तरह के भेद क्यों लाये जाते हैं, तो मालूम होगा कि सांसारिक सुख के लिये, इस जीवन के सुख के लिये और सृष्टि-क्रम को जारी रखने के लिये स्त्री पुरुष एक हैं । उसमें आप भेद नहीं कर सकते । अगर भेद करते हैं, तो अपनी मूर्खता प्रकट करते हैं, इसके अतिरिक्त और कुछ नहीं कहा जा सकता है । हमारा यह शरीर है, अगर इसके दो अंगों नाक और कान में झगड़ा हो और वे एक दूसरे को कहें कि "मैं तुम से बड़ा हूं या मैं तुम्हारे बराबर हूं", तो इसका क्या मतलब होगा ? स्त्री पुरुष एक हैं । हमारे शास्त्र में स्त्री को अर्द्धांगिनी कहा गया है । कहीं कहीं पर लोग यह बात कह देते हैं कि स्त्री को लोग कम समझते हैं—इन्फीरियर समझते हैं । शायद दुनिया में इस तरह के लोग हों—यहां पर सब तरह के लोग हैं । भर्तृहरि ने कहा है :

न जाने संसारः किममृतमयः किं विषमयः

दुनिया में ऐसी कोई चीज नहीं है, जिसके विषय में कहा जा सके कि वह बिल्कुल ही भली है और उसमें कोई बुराई नहीं है । अगर स्त्री और पुरुष दोनों के महत्व और आवश्यकता के सम्बन्ध में विचार करें, तो मैं कहूंगा कि पुरुष की निस्बत स्त्री कहीं ज्यादा मूल्यवती है । मैं समझा

देता हूं। आज स्त्री समाज को संसार से खत्म कर दीजिये और सृष्टि खत्म हो जायेगी, लेकिन अगर पुरुष को आप खत्म कर दें, तो संसार खत्म नहीं होगा। मैं और साफ़ किये देता हूं। स्त्री को अगर आप खत्म कर देते हैं, तब पुरुष के पास कौन सा साधन है जिससे वह इस सृष्टि-क्रम को जारी रखेगा? कोई साधन नहीं है। अगर पुरुष को आप खत्म कर देते हैं, तो अभी लाखों करोड़ों स्त्रियों के गर्भ में इतने बच्चे हैं, जिससे सांसारिक कार्यक्रम जारी रहे। अब आप समझ सकते हैं कि स्त्री के महत्व के सामने पुरुष कुछ नहीं है। यह बात मैं तब कहता हूं, जब आप स्त्री और पुरुष के महत्व के सम्बन्ध में डिफरेंशिएट करते हैं। लेकिन मैं कहता हूं कि दोनों एक हैं।

सभापति महोदय, मैं भी एक मनुष्य हूं। हिन्दू समाज में मेरा जन्म हुआ है। मैं कुछ पैसे कहीं से लाता हूं, मैं अपनी स्त्री या बच्चों के सामने यह नहीं कह सकता कि ये मेरे हैं, तुम इनको नहीं छू सकते हो। लेकिन इस तरह के भेद-भाव बढ़ा कर लोग देश की बुराई कर रहे हैं, भलाई नहीं कर रहे हैं। इस सम्बन्ध में लोग कहते हैं कि शास्त्र तो आजकल बनता है और संसद भवन में जितनेलोग बैठे हैं, सभी मनु हैं। ठीक है। लेकिन मुझे माफ किया जाये, मनु के पास कोई व्हिप नहीं गया था। आप इस बात को समझ लें कि कानून बनाने का हक उसी का है, जो परमात्मा को साक्षी रख कर, हृदय से उसको जो प्रकाश मिले उसके मुताबिक राय दे और बोले, और जो ऐसा नहीं करता है, उसको कानून बनाने का हक नहीं है। हां, पुलिस और पलटन आपके साथ है, जो चाहो, सो कर लो। इस लिये मैं सारे संसार को कहता हूं—इस सदन को भी कहता हूं—कि व्हिप के ज़रिये और दलबन्दी के ज़रिये जो कानून बनाया जा रहा है, वह मानवता के खिलाफ है।

डा० सुरेश चन्द्र : इस में व्हिप नहीं है।

बाबू रामनारायण सिंह : नहीं है, तो आ जायगा।

डा० सुरेश चन्द्र : व्हिप उनको मिलेगा, जो भेद-भाव करते हैं।

बाबू रामनारायण सिंह : हो सकता है कि इन में असली मनु एक ही है और बाकी उसके चेले-चांटे हैं।

एक माननीय सदस्य : बाकी नकली हैं।

बाबू रामनारायण सिंह : लेकिन जिस तरह से काम हो रहा है, वह देश के हित में नहीं है। कानून जो बनता है, वह, दुनिया में जो अनर्थ हो रहा है, उसको रोकने के लिये बनता है। लेकिन आप इस कानून को बना कर अनर्थ को बढ़ायेंगे। सभापति महोदय, मैं दूर नहीं जाऊंगा। कुछ दिन हुये रेंट कंट्रोल एक्ट पास हुआ। आप दिल्ली की कचहरी में देखिये कि इतने मुकदमे आ गये हैं, जिनका कोई हिसाब नहीं है। मैं यह नहीं कहना चाहता हूं कि स्त्रियों को हक न दिया जाय। मैं तो समझता हूं कि सभी उनका हक है। हमारी परम्परा तो यह है कि हमारे कुल में स्त्रियां लक्ष्मी हैं—लक्ष्मी की तरह उनकी पूजा होती है। शायद बहुत से लोग नहीं जानते होंगे कि यदि हम कहीं बाहर जायेंगे, तो लौट आने पर बेटा आ कर प्रणाम करता है, पोता प्रणाम करता है, लेकिन बेटी प्रणाम नहीं करती — उसका स्थान हम से अधिक समझा जाता है। दुनिया में बहुत से लोग हैं। जगह जगह की बातें भिन्न भिन्न होती हैं, लेकिन हमारे समाज में स्त्रियों का

[बाबू रामनारायण सिंह]

स्थान बहुत ही ऊंचा हर तरह से ऊंचा है और इस तरह की बातें कर के, इस तरह के कानून बना कर किसी का कल्याण नहीं होगा। मैं आपको बताता हूं कि कैसे इससे अनर्थ बढ़ेगा ।

दिल्ली की एक लड़की कानपुर में ब्याही गई। चाहे कम हो और चाहे ज्यादा हो, सम्पत्ति पर इस क़ानून के मुताबिक़ उसको हक़ मिलेगा। असल में सम्पत्ति किसी के पास है ही नहीं और किसी के पास रहेगी भी नहीं। सब को ग़रीब बनाया जा रहा है। खैर, जो कुछ भी हो, कानपुर में रहने वाली लड़की दिल्ली में हिस्सा चाहेगी, तो कसे कैसे क्या होगा ? आप जानते हैं कि हमारे समाज में एक गांव में एक कुल के ही ज्यादा लोग बसते हैं और दूसरों को वहां रहने नहीं देते। बहुत सी बातें होती हैं। सब का हिस्सा होगा मैं कहता हूं इसमें इतने मुकदमें होंगे जिसका कोई हिसाब नहीं है। श्री ठाकुर दास भार्गव और शर्मा जी ने जो कुछ कहा है, मैं उसका समर्थन करता हूं ।

मरुमक्कत्तायम् के मुताबिक़ स्त्रियों को सब अधिकार है, पुरुष को नहीं है। आप वैसा ही क़ानन बना कर सभी अधिकार उनको दे दीजिये ।

स्त्री का काम दूसरा होता है और पुरुष का दूसरा और अगर इन दोनों को आपस में मिला दिया जाय तो ईश्वर जाने इस का क्या नतीजा निकलेगा। एक ऐसा क़ानून बन जाय जिस में सब अधिकार स्त्री को दे दिये जायें, यह बात तो समझ में आ जाती है और नहीं तो जैसा कि दूसरों ने सुझाव दिया है और सरकार मे तनिक भी अक्ल है तो उसे उस सुझाव को मान लेना चाहिये और अगर नहीं मानती तो दूसरी बात है। यह ठीक है कि जैसे हमारे शास्त्रों के मुताबिक़ मिताक्षर फैमिली के मुताबिक़ जब पुत्र गर्भ में ही होता है जायदाद पर उसका हक़ हो जाता है। इसी तरह से जब लड़की का विवाह हो तो जिस दिन से विवाह हो उस दिन से उस कुल में उसका सारा अख्त्यार हो जाय या पुरुष के साथ उसका अख्त्यार हो जाये यह समझ में आता है, इस में झगड़े नहीं होंगे ।

सभापति महोदय, मैं ने लड़कियों के विवाह किये हैं। हर कोई यह चाहता है कि हमारी लड़की ऐसे कुल में जाये, ऐसे खानदान में जाये कि जहां पर वह सुखी हो, हम से अधिक सुखी हो, वग़ैरह वग़ैरह। हर पिता की यह इच्छा होती है, हर पिता की यह अभिलाषा होती है। यह एक साधारण सी चीज है। लेकिन इस क़ानून से जब लड़की को सम्पत्ति में हिस्सा मिलने लगेगा तो उसके विवाह के लिये खर्च कहां से आयेगा ? इस बात को मैं सोच भी नहीं सकता। इतना अन्तर हमारे समाज में आ जायेगा इस का हम खयाल भी नहीं कर सकते। तो मैं पाटस्कर साहब से कहूंगा और उनकी सरकार से निवेदन करूंगा कि जो भी वे करें देश की भलाई को ध्यान में रख कर करें ।

सभापति महोदय, आप ने घंटी बजा दी है। इस लिये इतना ही कहना चाहता हूं कि ऐसा ही क़ानून बनाया जाये जिस से समाज का भला हो, जिसे समाज चाहता हो। सभापति महोदय, लौ के बारे में यह कहा गया है :

"Law is nothing but the will of the people expressed in terms of law"

लॉं के माने हैं जो जनता की इच्छा हो, और ऐसी इच्छा को क़ानून का रूप दे दिया

जाता है । आज आप देश में वोट लीजिये । सारे देश में मैं तो समझता हूं कि सौ में पांच वोट भी आप को नहीं मिलेंगे जो इस क़ानून के हक़ में हों । इस वास्ते इस तरह का क़ानून बना कर जनता के ऊपर लादना ठीक नहीं है । इस से देश का भला नहीं होगा, बुरा होगा । मैं पाटस्कर साहब से कहना चाहता हूं कि इस तरह के कामों में आंख मूंद कर सरकार का साथ न दें । मैं समझता हूं अभी तक उन पर सरकार का ज्यादा बुरा असर नहीं पड़ा होगा । अभी भी समय है वह इस पर फिर विचार करें और इस क़ानून को वापस ले लें ।

Shri U. M. Trivedi: As Mr. Tek Chand has said, we have already had two instalments of the Hindu Code, and the third instalment is now being foisted on our heads. The difficulty about discussing this Bill is very great. On the one hand, one does not like the idea, in abstract, that a woman shall not get a share in her father's property. Such a law will not appeal to those who have lived far away from India and who have no conception of what Hindu joint family means. What the right of survivorship means, what the son's liability for father means, these things are not conceivable by those who are born and bred up in England or other western countries and who have no idea of what Hindu life is.

To have reached that stage of greatest evolution, people have not analysed in what manner Hindu society developed, what was the exact social pattern on which Hindu society had developed, and how this evolution in a particular manner had helped to keep this society.

Unfortunatly, what is happening today is, to repeat the words of a friend: "Cynicism and an utter materialistic view of life preponderate everywhere. There are no beacons, no guiding posts, only buildings, structures, machines and figures. If a balance-sheet were drawn up of the imponderables that are of the essence in nation-building, we shall be faced with sheer bankruptcy." This is what is going on before us. "Shibboleths there are in plenty. 'The socialistic pattern of society', 'Sarvodaya', 'No distribution of poverty', 'Equality of opportunity for all' and so on and so forth. But in reality the top of the social structure is becoming heavier and heavier, in the terms of bureaucracy, party-caucus and bag-nobility, while the very foundations, the progressive middle classes, are being sapped out of existence." And by this I mean the whole Hindu society is being wiped out. Mental and moral values....

An Hon. Member: What is the quotation?

Shri U. M. Trivedi: Do not disturb me.

Mr. Chairman: The hon. Member is asking for the name.

Shri U. M. Trivedi: I was quoting from the *Modern Review*.

Sometimes one gets annoyed and wants to use hard words. It is said that hard words generally do not break bones and that is why it is better not to use them. But in this particular instance, when one sees what is happening before one's eyes, one does feel like using strong language. This is merely, I should say, a puerile and vindictive attempt at breaking the peace of Hindu society. It is entirely a reactionary measure, and a reactionary measure with a vengeance against the Hindu society for having stood up against some big guns of the Congress Party and done the sin of opposing a Hindu by a Hindu. This is the only reason why this is

[Shri U. M. Trivedi]

being foisted upon the heads of Hindus. You dare not do it against Muslims. You see the calumny that is being put upon the poor Muslim women. You have not raised your voice against it, even once. Even today in Madhya Bharat State you have not yet applied the Muslim Dissolution of Marriages Act. You have slept over it. You have not yet provided for the maintenance of a widow of a predeceased son of a Muhammadan, and you have come forward only to grant this relief to a Hindu sister or a Hindu woman. I do not say it is partiality. I say it is vindictiveness on your part. You dare not in any manner annoy the Muslims. There are two reasons. Firstly, you depend upon their votes. Two crores of Muslim votes are the only votes on the strength of which you come into this House; and, it is for that purpose alone that you are making this law to please them and not to displease them. You are so afraid of the Pakistanis who are there; they will shout at you and they will not give you the international certificate of generosity. Therefore, you are making this law only against Hindus. Have you studied the provisions carefully? Can you say that these provisions will be in any manner helpful to a Hindu family or a Hindu daughter? Have you not seen this idea that however poor a Hindu may be, in whatever circumstances he may be, he would always like his daughter to be married at a proper place to a proper man. He will try his best and he will get himself indebted to get his daughter properly married. Three or four generations will bear the debt for having a daughter married in a good family. It is not only a question of paying debt. It is a question of maintaining and worshipping the daughter, the daughter's sons, and the daughter's sons' sons. Hindu society has always honoured women so much; it has honoured the sister and the daughter so much. You cannot forget the experience that when we go from one village to another, if even one daughter of our village is married in that other village, we do not even accept water from that village. Now, you want that when the daughter dies, the mother and father of that daughter are going to get back her property for themselves. What a ridiculous idea of Hindu society have you got! From where did you borrow this idea? You must have studied it in some books. Study of English has degraded us so much that when we read these printed books, we think that all that is there in print is gospel truth. (*Interruptions*). Unfortunately this is going on.

A very concrete instance was given by Mr. Tek Chand as to what things will happen under the present law and the impossibilities which will arise under this present law that is being pressed before the House now. I do not want to multiply these examples, but I want you to apply your mind to the single example which Mr. Tek Chand placed before you. What is the thing that you are going to do for the Hindu society? You have this idea of Hindus that an unchaste woman is not entitled to inherit property and at the same time you place an impossible embargo upon the whole question by saying that she must be declared unchaste by a court of law, and that too, in proceedings where both the husband and the wife are parties. What a ridiculous situation you are trying to create! You have not applied your mind to the question.

I say, Sir, as a lawyer, when I look into these provisions, I feel astounded. But because my fundamental objection is to the very root of this Bill itself, I refrain from giving you further criticisms on the various provisions that are contained there. You have not clearly conceived the present structure of Hindu society, how a lady born in a particular family receives not only her full share, but more than full share. Why this materialistic outlook of counting only in terms of rupees, annas and pies? Are you going to drive out by this

measure the love which the sister feels for the brother or the brother feels for the sister? Generation after generation brothers respect their sisters, respect their sisters' sons and give them out of their mite. Here you are saying that she will have a share. Once she demands the share what happens? Once she demands that share, does that love continue? What happens when she goes into another man's house and becomes the wife of another man? For instance, the daughter of a villager who has a few acres of land is married to a man who is living at a very great distance. A daughter living, say, in Rohtak in Punjab is married to a man in Bharatpur. Is he going to come and till the soil?

An Hon. Member: He will auction it.

Shri U. M. Trivedi: He will auction it; he will sell it to persons who are at loggerheads with the family of the girl, and those at loggerheads alone will get that property. Are you going to create a peaceful atmosphere for the Hindu society or are you going to create litigation for the sake of mere litigation and for the sake of satisfying your vengeance against Hindu society? I am using this strong language so that something at least may go into the locked-up brains. Our Prime Minister, Shri Jawaharlal Nehru, was saying that people had got their brains made up. You have got your brains not only made up, but locked up. If anybody has got the key to open it, I would ask that gentleman to open your brains, so that at least some justice may be done to the society. It is quite true that you may be guided by some honest considerations; but allow those considerations to be placed before the society. Let them not be locked up in your brain. Do you think that everyone else present in this House is an idiot, except those who belong to the party which preaches this law? That conception should be given up.

Pandit K. C. Sharma (Meerut Distt.—South): It is not a party matter.

Shri U. M. Trivedi: I very much appreciate the words coming from Pandit Sharma that it is not a party matter. I know it. What happens here is that as soon as our Prime Minister comes, you get frightened and you do not vote according to the dictates of your conscience.

Pandit K. C. Sharma: On a point of order, Sir. I take a strong objection to this statement. Is any hon. Member entitled to say about any other hon. Member that he is not voting in accordance with the dictates of his conscience? It is contradictious to the prestige of this House to use such language. The moment a Member uses this language, he loses the claim to respect as a Member of this House. He insults the constituency that has elected him.

Mr. Chairman: I do not think that this matter comes really within the category of point of order technically. After all, if an hon. Member uses this language against another Member, the other Member can retaliate it in the same way.

Shrimati Renu Chakravartty: The Members themselves come out in the lobbies and tell us, "we have voted against our conscience"!

Mr. Chairman: Order, order.

Shri U. M. Trivedi: I have every respect for the conscience of Mr. Sharma. What I say is, they are all guided by the party whip. This is all I have said and I say it for what it is worth.

Dr. Suresh Chandra: You do not have the monopoly of wisdom and conscience.

Shri U. M. Trivedi: I have got another objection against this Hindu Succession Bill and the previous Bill which we passed. I cannot see why they were introduced first in the Rajya Sabha and why such a pernicious principle is being followed. We are the representatives of the people, we are in contact with the masses Why are these Bills not placed before the Lok Sabha to begin with? Why

[Shri U. M. Trivedi]

are they placed before the Rajya Sabha? This is a pernicious principle. The Lok Sabha must have a discussion over this Bill, so that it may not be faced with any *fait accompli*.

श्रीमती सुभद्रा जोशी (करनाल) : सभापति जी, यहां पर कुछ सदस्यों की बात चीत सुन कर जिस तरह से हमारे एक माननीय सदस्य को सती की प्रथा याद आई, उन को किसी ने बुला कर कहा कि मैं सती हो जाती तो अच्छा था, उसी तरह मुझ को वह दिन याद आया जिस वक्त पैदा होते ही लड़की की गर्दन मां बाप घोट दिया करते थे ।

श्री धुलेकर (ज़िला झांसी—दक्षिण) : हमारे यहां नहीं होता था ।

में होता था, मेरे अपने खान्दान में होता था । गलत था यह सही था, लेकिन कुछ लोगों में होता था, मेरे खान्दान में भी होता था और बिरादरी में भी होता था, इसलिये मैं इस बात को जानती हूं, हो सकता है कि यह बात ठीक न हो । और जिस तरह से उस बहन ने कहा कि अच्छा होता मैं सती हो जाती, उसी तरह से मुझ को सचमुच यह बात याद आ रही है कि धन्य थे वह मां बाप जो पैदा होते ही लड़की की गरदन मरोड़ देते थे । जो मुसीबत उन को उठानी पड़ती थी, और जो ज़लालत उठानी पड़ती थी लड़की पैदा करने के बाद और जो मुसीबत उन की लड़की को उठानी पड़ती थी, कम से कम वह उस से वाकिफ तो थे । [PANDIT THAKUK DAS BHARGAVA *in the chair*] उसको जानते तो थे । आज भी हमारे यहां माताओं को अफसोस होता है, जब लड़की पैदा होती है, इसलिये नहीं कि कोई मुसीबत आ गई, बल्कि इसलिये कि न मालूम बेचारी लड़की को किस तरह की जिन्दगी बितानी पड़े, न मालूम सुखी रहे, न मालूम दुखी रहे, न मालूम किस के घर में जाय, न मालूम उस का भविष्य क्या हो । पर हमारे यहां कुछ रिवाज कहिये, कुछ कानून कहिये, या कुछ भी कहिये, ऐसे हो गये जिन से हमारे अपने यहां के संस्कार भी ऐसे हो गये कि हम को सचमुच लड़की एक मुसीबत सी भी दिखाई देती है । हम उस के साथ हमदर्दी करते हैं, हम चाहते हैं कि वह सुखी जीवन बिताये, पर फिर भी हम उसके लिये कुछ करने के लिये तैयार नहीं होते और अगर कोई कुछ करने आता है तो धर्म के नाम पर, किसी रिवाज के नाम पर या किसी और चीज़ के नाम पर हम उस आदमी के रास्ते में आ कर खड़े हो जाते हैं ।

आज प्रापर्टी का सवाल है, उचित तो यह था कि हम आज मंत्री महोदय को मुबारकवाद देते कि कम से कम आज वह दिन तो आया जब कि वह इस बिल को हाउस के सामने लायें, लेकिन मुझे बड़ा दुःख होता है कि जो कुछ मैं ने दो तीन घंटों में सुना उस स यह मालूम हुआ कि दुनियां मे प्रार्टी ही सब कुछ है, प्रापर्टी दुनियां में सब से ज्यादा आवश्यक चीज़ है, क्या प्रापर्टी इतनी आवश्यक चीज़ हो गई जितना आवश्यक इन्सान भी नहीं है ? लड़की को प्रापर्टी मिले, बीबी को प्रापर्टी मिले तो सवाल यह होता है कि आखिर जायदाद का क्या होगा । यह कोई नहीं पूछता कि लड़की का क्या होगा, यह नहीं पूछता कि मां का क्या होगा, यह नहीं पूछता कि पत्नी का क्या होगा, प्रापर्टी ज्यादा महत्व की चीज बन गई है और इन्सान कम महत्व की चीज़ हो गया है । मैं कहना चाहती हूं कि आज वह दिन आ गया है कि हम सोचें कि जायदाद इन्सान के लिये होती है, इन्सान जायदाद के लिये नहीं होता है । हमारी भावना में यह फर्क होना चाहिये ।

सभापति महोदय, इस कानून के दो भाग हैं, एक तो पत्नी के अधिकार का सवाल है और एक लड़की के अधिकार का सवाल है। जहां तक पत्नी के अधिकार का सवाल है, पत्नी को अपनी जायदाद पर पूर्ण अधिकार दिया गया है। हमारे कुछ भाइयों ने कहा कि पत्नी को पूर्ण अधिकार दिये जाने में खतरा है, औरत को खतरा है, जायदाद को खतरा है, उन्होंने कहा कि अदालतों में ऐसे बहुत से केसेज आते हैं जिन में कि औरत अपनी नासमझी से, नाकाबिलियत से, या और किसी वजह से प्रापर्टी को बेकार कर देती है, खराब कर देती है। मुझे ऐसे बहुत से वाक्यात मालूम हैं जहां लड़के निकम्मे निकल जाते हैं, जहां लड़के शराब पीते हैं, जहां लड़के दूसरी गलत बातें करते हैं, जहां एक बिल्कुल बेहूदा और नामुनासिब आदमी अपने मां बाप की बड़ी भारी जायदाद को इन्हेरिट कर लेता है। अगर ऐसा कोई कानून बनाया जाय कि अनपढ़ आदमी को जायदाद नहीं मिल सकती, कोई ऐसा कानून बनाया जाय कि जाहिलों को जायदाद नहीं मिल सकती, कोई ऐसा कानून बनाया जाय कि जो नामुनासिब आदमी है उस को जायदाद नहीं मिल सकती, जिस के हाथ में जा कर प्रापर्टी के खराब हो जाने का खतरा है उस को नहीं मिल सकती, या जिस के हाथ में जा कर दूसरों के इन्टरेस्ट में कोई गलत बात हो सकती है उसको नहीं मिल सकती तो मुझे मुनासिब मालूम होता, लेकिन कानून यह बने कि जायदाद पर उसे इस लिये अधिकार नहीं मिल सकता कि वह एक स्त्री है और दूसरे को इसलिये मिल जाय कि वह पुरुष है, यह नहीं होना चाहिये। अगर आज की स्थिति में देखा जाय, अगर जरूरतमंदी की बात देखी जाय तो फिर मैं कहूंगी कि स्त्री पुरुष से ज्यादा जरूरतमन्द है, फिर भी उस को यह कह कर अधिकार न दिया जाय कि वह उस को नहीं सम्भाल सकती, यह मेरी समझ में नहीं आता। मैं अपने घरों में देखती हूं, अनपढ़ बहनों को देखती हूं, जो गिनती तक नहीं जानतीं १०० तक, उन्होंने घर की एक एक चीज को गिन कर रक्खा है, एक एक चीज का हिसाब वह जानती हैं। किस के घर से कितने लड्डू शादी पर आये और कितने बताशे आये, इसका हिसाब किताब तक वह जानती हैं। अगर पति २० रुपया पाता है तो उस में उस को खाना खिलाती है, अगर पति ५० रुपया पाता है तो उस में खाना खिलाती है और पति ५०० रुपया पाता है तो उस में निर्वाह करती है, और उस में से एक एक पैसा एक एक कौड़ी जोड़ कर वह एक महल खड़ा कर लेती हैं, जायदाद खड़ी कर देती हैं और मुसीबत आने पर उसी के सामने भीख मांगने पर मजबूर होती है। मुझे यह कहना है कि जो अनपढ़ स्त्री है, जिस को कि अनजान स्त्री कहा जाता है, जब वह इतना कर सकती है तो वह अपनी जायदाद को सम्भाल कर नहीं रख सकती, यह मेरी समझ में नहीं आता। जायदाद ऐसी चीज है, और बहुत सी दूसरी चीजें भी ऐसी हैं जो करने से आ जाती हैं, जो नहीं करते उन को नहीं आतीं। मैंने देखा कि मुसीबत पड़ने पर बहुत सी हमारी विधवा बहनें, जो बचपन में विधवा हो गईं, कोई बड़ी आयु में विधवा हो गईं, वह खुद मुसीबत उठा कर बच्चों को पढ़ाती हैं। मैंने देखा पति गलत निकल गया या अपाहिज हो गया, मुसीबत में पड़ा तो उसे भी सम्भालती हैं और जायदाद भी सम्भालती हैं। तो यह दृष्टिकोण रखना कि स्त्री जायदाद ो सम्भाल नहीं सकेगी, यह उचित बात नहीं है।

[श्रीमती सुभद्रा जोशी]

दूसरी बात मुझे लड़कियों के अधिकार के बारे में कहना है। आज हमारे सामने यह एक नई बात आई है और इस पर मुझे मंत्री महोदय को जरूर मुबारकबाद देनी है। आज लड़के लड़कियों में बड़ा अन्तर माना जाता है। जैसा मैंने आप से कहा हमारे यहां के रिवाजों से हमारे यहां के कानूनों से हमारे संस्कार ऐसे हो गये कि कई दफा तो हमारे यहां मां भी ऐसा कहती है जिस से बड़ा दुःख होता है। दुनियां में मां के प्रेम को आदर्श प्रेम कहा जाता है। कहते हैं कि मां के प्रेम से बढ़ कर कोई चीज नहीं, लेकिन आज संस्कारों की मजबूरी से, कानून की मजबूरी से, सर्कम्स्टान्सेज की मजबूरी से, रिवाजों की मजबूरी से मां को भी लड़के लड़की में फर्क दिखाई देना लगा है। मैं एक जगह गई, एक गांव में आग लग गई थी और बदकिस्मती से एक छोटा बच्चा बेचारा उस में जल कर मर गया। मैं वहां हमदर्दी करने के लिये गई थी। मैं ने देखा कि मां बैठी थी और उसी के पास उस की बच्ची बैठी थी जो कि कुछ बड़ी थी और समझदार भी थी। उस के सिर पर हाथ मार मार कर मां कह रही थी कि तू क्यों न मर गई, तेरा भैया क्यों मर गया? मुझे यह सुन कर बड़ी चोट लगी। मां अपनी लड़की को प्यार नहीं करती, यह मेरी समझ में नहीं आता। पर हालत ऐसे हो गये कि मां भी मजबूर है फर्क करने के लिये। तो जो हमारा कानून था, रिवाज थे, उन्होंने माता के प्रेम को भी बदल दिया, लेकिन आप समझ सकते हैं कि यह कोई मुनासिब चीज नहीं। अपने माता पिता की जायदाद में लड़कियों को अधिकार क्यों मिलना चाहिये, इस सम्बन्ध में मैं चन्द शब्द कहना चाहती हूं। आज हमारे अपने मां-बाप के घर में हमारा जो पालन-पोषण होता है, वह एक पराई लड़की को तरह होता है। जब लड़की जरा होश सम्भालती है, तीन चार पांच बरस की हो जाती है, तो मां कहती है कि "खाना पकाना सीख लो, वर्ना पराये घर में क्या करोगी? यह काम करना सीख लो, नहीं तो शादी के बाद तुम्हारा क्या होगा?" जितने अच्छे काम हम को सिखाये जाते हैं, वे शादी को दृष्टि में रख कर ही सिखाये जाते हैं। हमारे दिमाग पर यह बात बिठाई जाती है कि तुम्हारे जीवन का उद्देश्य, तुम्हारे जीवन का ध्येय, तुम्हारे जीवन की समाप्ति सिर्फ शादी है। जो कुछ तुम को सिखाया जा रहा है, जो कुछ तुम्हारे चरित्र निर्माण के लिये किया जा रहा है, जो कुछ तुम्हें शिक्षा दी जा रही है, वह सिर्फ इसलिये कि तुम को शादी कर के दूसरे घर जाना है। इन बातों का हमारे दिमाग पर यह असर होता है कि हम समझने लगती हैं कि शादी ही हमारे जीवन का उद्देश्य है। सभापति महोदय, मुझे कहना है कि शादी जीवन का उद्देश्य और लक्ष्य नहीं है, बल्कि जीवन में जैसे दूसरी चीजें हैं, वैसे ही शादी है। होता आज-कल यह है कि लड़की बड़ी हुई, उसको पढ़ाया-लिखाया, सुघड़ बनाया और उसकी शादी कर दी और अगर इत्तिफ़ाक से शादी खराब हो गई, लड़का नालायक निकला या मर गया या छोड़ कर चला गया, तो लड़की की हालत वैसी हो जाती है, जैसे बेल की हालत होती है। एक पेड़ होता है, जो कि खड़ा रह सकता है और एक बेल होती है, जिसकी अपनी कोई जिन्दगी नहीं होती है और जब तक उसको कोई सहारा न मिले, वह खड़ी नहीं रह सकती है। अगर इत्तिफ़ाक से जिन्दगी की किसी घटना से उस से पेड़ का सहारा छिन जाता है, तो लतिका की तरह वह बरबाद हो जाती है।

मुझे याद ग्रा रही है पाकिस्तान की हमारी उन बहिनों की बात, जिन के बारे में कहा जाता है कि वे यहां ग्राना नहीं चाहतीं हैं। क्यों? क्या इसलिये कि जिसने उनके पति को मारा, मां-बाप को कत्ल किया, उससे वे प्रेम करने लग गई हैं? क्या ऐसा कभी हो सकता है? वे इसलिये नहीं ग्राना चाहती हैं, क्योंकि वे समझती हैं कि समाज में हमारी ज़िन्दगी नहीं रही। वे इसलिये नहीं ग्राना चाहतीं, क्योंकि वे समझती हैं कि पता नहीं मेरा पति मुझ को रखे या न रखे, मां-बाप रख सकें या न रख सकें, दुनिया में मेरा कोई सहारा नहीं होगा, ग्रौर इस वजह से वे मजबूरी में उस हत्यारे, डाकू, निर्दयी के घर ग्रपनी ज़िन्दगी बरबाद करना ज्यादा मुनासिब समझती हैं। ग्रगर उनका भरण-पोषण उनकी शिक्षा किसी दूसरे उद्देश्य के लिये की गई होती, तो ग्राज उनका चरित्र कुछ दूसरा ही होता, वे ग्रभिमान के साथ कह सकती कि चाहे हमको कोई रखे या न रखे, चाहे पति के घर जगह न मिले, चाहे मां-बाप न रख सकें, लेकिन हम उस हत्यारे के घर में नहीं रहेंगी ग्रौर हम ग्रपने देश ग्रौर समाज में ग्राज़ादी के साथ रह कर जीवन बितायेंगी। लेकिन ऐसा नहीं होता है।

दूसरी बात यह है कि हम लड़कियां गरीब दुकानदार के सौदे की तरह होती हैं जो रखी नहीं जा सकती हैं, क्योंकि मां-बाप के घर में हमारा कोई ग्रधिकार नहीं होता है। एक ग्रमीर दुकानदार होता है, जो कहता है कि मुझे सौदा बेचने की कोई मजबूरी ग्रौर जल्दी नहीं है, ग्रगर कोई ग्रच्छा ग्राहक न ग्राये, तो हम नहीं बेचेंगे, उसको रखेंगे, इन्तज़ार करेंगे। एक गरीब दुकानदार ऐसा नहीं कर सकता। वह जानता है कि मैं ग्रपना सौदा रख नहीं सकता हूं। हमारे मां-बाप कहते हैं कि तुम खुशहाल हो ग्रौर हम तुम को प्रेम करते हैं, लेकिन ग्रगर कल हमारी ग्रांखें मूंद गई, तो तुम्हें कौन पूछेगा। इस लिये वे दर दर भटकते हैं, मारे मारे फिरते हैं कि कोई ग्रच्छा वर मिले ग्रौर ग्रगर नहीं मिलता है, तो भी वे रख तो नहीं सकते हैं, कहीं न कहीं भेजना पड़ता है, मजबूरी में शादी करनी पड़ती है। हमारे भाई कहते हैं कि दहेज देते हैं। हम नहीं चाहते वह दहेज। यह भी कहते हैं कि ग्रगर शादी हो, तो वह पति की जायदाद में ग्रधिकारिणी हो जाय ग्रौर ग्रगर न हो, तो पिता की। मुझे यह कहना है कि शादी जैसी चीज़ के साथ सम्पत्ति का या जायदाद का कोई कनेक्शन या ताल्लुक जोड़ना समाज के लिये मुनासिब नहीं है। इस से समाज में करप्शन ग्रौर व्यभिचार पैदा होगा ग्रौर ग्राचरण ऊंचा नहीं होगा। एक लड़की है, उसके मां-बाप बहुत ग्रमीर हैं, बहुत जायदाद के मालिक हैं। कहते हैं कि ग्रगर वह शादी करेगी, तो उसको घर से कुछ नहीं मिलेगा ग्रौर न हुई, तो मिलेगा। क्या ग्राप समझते हैं कि वह लड़की इतनी देवी, महात्मा ग्रौर ऊंचे ग्राचरण वाली निकलेगी कि उस लालच को रोक सके ग्रौर उस जायदाद को छोड़ दे या शादी न करें? इसलिये यह बात शादी के साथ जोड़ना मुनासिब नहीं है। यह भी कहा गया कि भाई ग्रौर बहिन में प्रेम कम हो जायेगा। जब सम्पत्ति की बात होती है, तो प्रेम की बात लाना हास्यास्पद मालूम होती है। मुझे यह नहीं कहना है कि भाई ग्रौर बहिन, पति ग्रौर पत्नी ग्रौर भाई भाई ग्रापस में प्रेम नहीं करते हैं—एक कुनबे में घर के बाल-बच्चों ग्रौर पति-पत्नी में प्रेम होना स्वाभाविक है, लेकिन जायदाद के मामले में प्रेम की बात लाना कुछ समझ में ग्राने वाली बात नहीं है। जो लोग मज़दूरों में काम करते हैं, वे जानते हैं कि जब मज़दूर मालिक से बोनस मांगते हैं, तो

[श्रीमती सुभद्रा जोशी]

मालिक अक्सर कहते हैं कि बोनस से दुगना ले लो, अगर तुम ने १५ रुपये बोनस मांगा है, तो मैं ३० रुपये देने के लिये तैयार हूं, लेकिन मैं ये ३० रुपये एक रियायत के तौर पर दे रहा हूं, इस पर तुम्हारा कोई अधिकार नहीं है। अगर अधिकार की बात करोगे, तो लड़ाई होगी। अधिकार मत मांगो, सहायता ले लो, सहायता दे देंगे, ताकि मस्कीयत मेरी रहे। तुम को जो कुछ लेना है वह देंगे और तुम्हारी मदद करने के लिये तैयार हैं, इत्यादि, इत्यादि। यहां भी वैसी ही बातें कही जा रही हैं। यह लेने और देने की भावना टिकने वाली नहीं है। कम हो या ज्यादा हो, हम जितना चाहेंगे उतना देंगे, नहीं तो नहीं देंगे, इस किस्म की मैन्टेलिटी को रोकना चाहिये।

हमारे पंजाब में एक गाना है। शादी के बाद जिस वक्त लड़की जाती है, तो वह रोती है, उसके मां-बाप रोते हैं, मुहल्ले वाले और पड़ोसी रोते हैं, बरात वाले भी रोते हैं। औरतें गाती हैं कि शादी के बाद मां बेटी से कहती है कि तुम रोज रोज़ वापिस आना, बाप कहता है कि कभी कभी आना, भाई कहता है कि विवाह-शादी, त्यौहार पर आना और भाभी कहती है कि आने की ज़रूरत ही क्या है। जितनी देर मां-बाप ज़िन्दा हैं, बाप कमाता है, लड़की के लिये प्यार है, घर है, सब कुछ है, पर सभापति महोदय, मैं उन घरों को भी जानती हूं जहां भाई राज करता है और बहिन दर दर भीख मांगती है, जहां शादी के बाद लड़की के घर में आते ही काना-फूसी होती है और लड़की की शक्ल ज़हर लगती है। लड़ाई तो उस वक्त होती है। दो भाइयों में भी उस वक्त लड़ाई होती है, जब कि एक भाई इस बात की कोशिश करे कि मैं दूसरे का अधिकार छीन लूं। अगर वह ऐसा न करे, तो लड़ाई नहीं होती है। जिस दिन भाई यह कोशिश करे कि मैं इसका अधिकार छीन लूं, उस दिन प्रेम की बात खत्म हो जाती है। इस कानून में प्रेम का कोई सवाल नहीं है। अगर आप लड़कियों को नहीं देना चाहते हैं, तो मत दीजिये और कह दीजिये कि हम नहीं देना चाहते हैं। अगर इत्तिफ़ाक से बाप की मर्ज़ी नहीं है और उसे लड़के लड़की में फर्क दीखता है, तो वह मत दे, लेकिन अगर बाप नहीं रहा है, तो कानून लड़के और लड़की में फर्क करे, यह बात समझ में नहीं आती है। कल को यह भी कानून हो सकता है कि अगर लड़की को कत्ल किया जायगा, तो फांसी नहीं होगी, उसको पीटा जायगा, तो जेल नहीं होगी। अगर मां बाप फर्क करना चाहते हैं, तो शौक से करें लेकिन वसीयत-नामा न होने पर उत्तराधिकार कानून के मातहत सरकार की तरफ से वह फर्क करना मुनासिब नहीं है। इसलिये मैं कहना चाहती हूं कि इस में लड़के लड़की में जो फर्क किया गया है, सिलेक्ट कमेटी उस पर गौर करे। हम नहीं चाहते कि लड़कियों को ज्यादा मिले। कानून की जो शक्ल है, उस से यह मालूम होता है कि लड़की को उधर से भी मिलेगा और इधर से भी अगर आधा मिलेगा तो भाई से—मरद से—उसको डेढ़ दो गुना मिल जायगा। हम चाहते हैं कि प्रापर्टी को शादी से सम्बन्धित न रखा जाय। इस लिये सिलेक्ट कमेटी से मेरी दरख्वास्त है कि वह इस बात की कोशिश करे कि प्रापर्टी से शादी का सम्बन्ध न रहे और प्रापर्टी बराबर बराबर मिले।

यहां पर घर बांटने की बात कही गई। लड़की का क्या होता है? मां और

बहिन का क्या होता है ? जिस मकान में मुझे आश्रय नहीं है, जिस को मैंने कौड़ी कौड़ी इकट्ठी कर के बनाया, जिस में लड़की और पत्नी का अधिकार नहीं है, उसको आग लगा कर जला दीजिये और मेरे सामने उसकी बात मत कीजिये । आज क्या होता है। चार लड़के हैं, तीन अच्छे हैं और एक नालायक है, खराबी करता है । मकान बिकता है । मकान बेचने के जो कानून हैं, अगर आप चाहें, तो उन में तब्दीली करें, लेकिन जो चीज तीन लड़कों में बांटी जा सकती है, वह क्या चौथी लड़की में नहीं बांटी जा सकती ?

आप कहते हैं कि उस मकान में आखिर कौन रहेगा ? आज वह जमाना नहीं कि जब एक घर में एक ही घर के लोग रहते थे, चार भाई थे तो चारों ही वहां रहते थे, एक ही पेशा करते थे, एक ही जैसी बातें करते थे । उस जमाने में गाड़ियां नहीं होती थीं , रेलें नहीं होती थी, मोटरें नहीं होती थीं, हवाई जहाज नहीं होते थे । आज एक भाई बम्बई में नौकरी करता है, एक भाई कलकत्ता में काम करता है, एक भाई अमरीका में चला जाता है, फिर भी जायदाद रहती है । मैं देखती हूं कि जहा तक बड़ी बड़ी जायदादों का सवाल है, सभापति महोदय, वह कैसे इस्तेमाल की जाती है। बड़े बड़े फ्लैट होते हैं, कनौट प्लेस में ही देखिये, एक फ्लैट में एक धर्म का आदमी रहता है, एक में दूसरे धर्म को मानने वाला रहता है, एक में हिन्दू रहता है, एक में मुसलमान रहता है, एक में ईसाई रहता है, एक में मीट खाने वाला रहता है और एक में जो मीट नहीं खाता वह रहता है । इतनी जरा जरा सी चीजों पर इतनी बड़ी चीज का विरोध किया जाये यह मेरी समझ में नहीं आता ।

अन्त में मुझे इतना ही कहना है कि जल्दी से जल्दी इस कानून को पास कर दें और मैं समझती हूं कि यह एक मुबारिक दिन है कि यह कानून हमारे सामने आया। इसके लिये में मंत्री महोदय को धन्यवाद देना चाहती हूं ।

Shri Raghavachari: Sir, I have gone through this Bill that is now introduced in this House. My submission is that, on the whole, I am in a position to welcome this Bill. But, my only feeling is that this Bill which is introduced is not really going to benefit the people whom they want to proclaim that they are benefiting. I know one thing that the real benefit of this Bill is going to be very little. I shall explain the whole thing.

Dr. Suresh Chandra: As it is.

Shri Raghavachari: I am afraid there seems to be a kind of race to show to the world that this Government is busy with pieces of legislation transforming the society into something new. And, with that hurry, almost an indecent hurry, a Bill of this kind is introduced and we do not know whether even the Business Advisory Committee gave its attention and then allotted the time. They have brought this Bill and they want to close it the next day; a piece of legislation which affects the rights of all people in the country is to be rushed through and then to become law. I feel that this is a Bill with far-reaching consequences, though, as I said, the Bill, as it is now framed, is not really going to take us far. I shall submit how.

Only recently, we had a Marriage Bill. That at least was a piece of legislation where there was no compulsion. There was option for the people to follow the old methods, the old procedure and the old notions and beliefs. I heard and heard complaints against it that the sacrament of marriage is gone. I examined the law and I have never found any obstacle

[Shri Raghavachari]

in the way of anybody continuing to have a view of life which he holds dear. This is not a Bill of that kind. This is a Bill which enforces legislation. Whether you will or not, the law will work. Therefore, more time and more attention and more care has to be given to a Bill of this kind.

I have also been listening to the arguments, almost of a sentimental type pleading the cause of women and daughters as if the whole body of daughters are going to be saved by this Bill or without this Bill they are all going to be doomed. Let us examine it. After all it is a question of property. There are sons and daughters. If the sons have property, all the daughters-in-law have property; if the daughters have property all the sons-in-law have property. After all you are not going to change the quantum of property. You are only going to change its distribution. The real reason will be each individual possesses something and, therefore, possesses the confidence of some economic independence. That is the whole thing and not that by passing this Bill you are going to make the whole community self-sufficient and economically sound.

Apart from all that, what I wish to say is, what is it that they are now proposing. They say that the daughter is going to be given a share. The daughter succeeds even now under certain circumstances. You make her a joint sharer. That is all that you are proposing here. Then, you examine whether it is fair to all women: are you concerned only with the daughter? I have examined the provisions. They have practically deprived the wives and the widows who were succeeding to the properties of their husbands in its fullness. I mean the right to the full property. Now you have made it a fraction...... You only want to distribute it to some other women also. Have you been fair to that group of people who must suffer or who were till now enjoying. They were women and not men. They were the widowed daughter-in-law and the widowed wife. Here some of them got some property and that was the whole of the husband's property. Now, even if she happens to be childless the widow gets only a very small fraction. Have you not, by this process, harmed the claims and the economic independence of another section of women?

Then, my friend Dr. Suresh Chandra was very vehement and saying what is all this, some people thinking or taking of the married and unmarried daughters, making some distinction in the matter of their claims. I am not concerned with the prejudice or trying to appear to be most interested in particular sections of the people. But, what exactly is the reason why people say that an unmarried daughter must be given some preference? What was the reason of the law? The reason of the law was this. You must know that you are enacting legislation at a time when the society has already certain notions and is committed to a particular course of conduct. In almost every family you will find married daughters and unmarried daughters also. Under the existing state of society, to secure a proper husband for a daughter, a family has to incur debts. We know how society is going on. They oftentimes spend a lot and they incur debts, the fathers and brothers. The father dies and you distribute the property to all married and unmarried daughters alike. The married daughter has a married husband and some property or other things already given and the unmarried daughter is left to herself, with the little property that you are going to give her. Oftentimes the property that is to be shared is nothing. In our parts and, I think, in other parts of India also, in a partition, the brothers quarrel and come to a partition, only to partition the debts. They have not much to partition among themselves. Therefore,

there is very real reason for the people to think that unmarried daughters must have some preference or some consideration over and above the married daughters.

Our lady friend was now appealing to sentiments as if the whole womankind was going to be prejudiced or endangered. Nothing of that kind. It is a matter of trying to give a share to the daughter. Is there any father, unless he happens to be a lunatic, that does not want to be kind to his daughter? In fact, in society, all the irritation or the unhappiness in a family eventually arises because the sons and their interests are tried to be safeguarded by one section of the house and the mother and the lady section wanting to safeguard or favour the other section. In fact, in most of the families misery and unhappiness is the result of this kind of thing. That is numan nature. In every healthy parent there will be the desire and affection to help the daughter also. Many a father, so long as he is in a position to dispose of property or distribute it, certainly takes care that he does give to his daughter also, knowing fully well that under the law as it is she is not going to share afterwards. What is it that you have provided here? You have excluded joint family property from the scope of this Bill. If you exclude joint family property, what other poreptry the people in the villages or rural parts possess, I am not able to understand this provision. It is only in towns and in urban areas people have some other properties. When joint family property is excluded what is it that the daughter is going to get? You proclaim from house tops that you are bringing an advanced measure by which the whole of the interests of the womanhood will be served. If joint family property is excluded, a majority of the women are not going to be benefited by this legislation. Therefore, I say that this Bill is not going to benefit a large section of the people materially, or even substantially. It is simply a show.

Shri Venkataraman: Are you in favour of extending it to *Mitakshara?*

Shri Raghavachari: I am in favour of extending it to everybody. I am a representative of the people. I want this Government and those who want to cry in the name of saving the world, to realise what they have placed before the House.

Shri Venkataraman: They are wrong: I entirely agree.

Shri Raghavachari: No father, as I have already said, unless he is a knave or an idiot will make a distinction between his daughter and his son. It is a matter of common knowledge that a mother loves more that child which is weaket than the rest and therefore, a good parent will take care of the needy daughter more than an earning son. That is ordinary human nature; that is affection. But we cannot change nature by making some law and proclaiming to the world that you have done something big. I am only concerned with showing to the world that there is not much in this measure.

You exclude joint family property. You have the right of testamentary disposition; and what is left is very little.

Again, as I said, take the existing state of the society. In fact, now between brothers because of the joint family there are so many quarrels and litigation.

"ज्ञातिश्चेदनलेनकिम्"

It is enough you have a cousin; you have no need for fire to burn yourself, they say. Now you are putting a daughter as a claimant and from the beginning the brothers would get busy thinking of depriving her of her share. Thus, you are creating discord, not concord in the family. I am afraid it will only lead to disputes in the family and the existing society. There the question is not so simple as you imagine it to be.

I shall now go through certain of the provisions of the Bill. From the distribution that has been made as be-

[Shri Raghavachari]

tween heirs, cognates, agnates, this group and that group, it looks that imagination of certain people has run riot. There is no scientific basis for the preference. People nearer related to the particular individual to whom they should succeed have not been preferred. Father and mother have been kept far away from the daughters, daughter's daughters, daughter's sons's son. I am not in a position to understand this. Have you made no distinction between man and woman in this case? They propose half a share to the daughter and that is the equality. As I have already pointed out there is no equality between the widow and the daughter and between the father and the son, or between the mother and her relations. Therefore, to my mind this looks like incorporating a law which is more Mohammadan than the Mohammadan Law itself. I for one think that there is plenty of reason and need to consider the matter carefully and revising the order in which heirs have been placed here.

Much has been said about the uniformity of law. This is not a uniform civil code. You have excluded Travancore. My friends from Travancore, or that part of India, are excluded from the marriage law, they are excluded from the succession law too!

Shri A. M. Thomas: They are more advanced.

Shri Raghavachari: From every law they are excluded. The language of clause 8, *General rules of succession in the case of males,* to my mind looks very defective and is not clear. It is likely to lead to some confusion. Then under clause 16, you have provided for the property of a female Hindu to become absolute property,— anything given to her by way of maintenance. Supposing a lady was entitled to maintenance only as before, and for providing for her during her lifetime they gave her something which was ancestral property, some trouble is likely to arise over it.

Then I come to sub-clause (2) (b) of clause 16 relating to ancestral property acquired by a female Hindu. I do not know wherefrom she will acquire encestral property. A joint family property is not given to her and there is no ancestral property in the case of a lady. That is a technical phrase which does not include all items of property of the father. Ancestral property she cannot inherit. Then again why do you make a distinction between the heirs of the lady and of the man? You want uniformity, one law; but for ladies you have a different kind of succession. Why? There also the daughter had all the properties of the mother so far.

Mr. Chairman: In the case of males the order is father and mother; in the case of females the order is mother and father.

Shri Raghavachari: If the lady when she becomes a widow can succeed to her husband's property first, why cannot the husband when he becomes a widower succeed to his wife's property?

Then under clause 25 I come to the application of the Partition Act. Somebody was saying that the right of pre-emption may be given. I find the language used here is not clear, but confused. What they intend is that in the case of every lady who has a share or undivided share to be divided later in partition, the other male partners or sharers have a right to purchase her share of the property. They only cite the case of a dwelling house. That means that the old Hindu Law and all its incidents must be looked into, there will be the question of other alienees coming in and then all this litigation. Then, there are the disqualifications provided. My other friends have referred to this; I do not again want to refer to them. I would certainly omit the provision about unchastity.

I wish to refer to only one other point also, that is about the murderer.

The language here, under clause 29 used is, "A person who commits murder....". It does not mean the person who is convicted of murder.

Pandit K. C. Sharma: It means that.

Shri Raghavachari: It does not mean that. To commit a murder is different from being convicted of murder. There are so many who commit murders, but there are very few who are convicted. In spite of the conviction the civil court will have once again to take evidence and find whether he has committed murder. I cannot understand the way in which the language has been used here.

I do not wish to take any more of the time of the House. I submit that the Select Committee have reason to be very careful and go through the opinions expressed by people of experience and certainly alter the law so that this piece of legislation is really beneficial to the people whom it wants to benefit. They may not be simply satisfied, "by the thought that it has become law soon and so they have served a cause."

Pandit K. C. Sharma: I have not much sense of property; I do not understand much of property law.

Shri Pataskar: May I just intervene for a minute, with your permission? I have been very carefully listening to the debate ever since I introduced this motion. I would like to make an appeal to hon. Members. It is a different matter with those who want to oppose the Bill. With respect to others, I would very much appreciate if they could make any constructive suggestions with respect to the points that have already been made. After all, the Bill is going to a Joint Committee. It is not as if I am going to ask that this Bill should be passed. This is only an appeal; if Members do not want to follow, I leave it to them.

Shri Velayudhan (Quilon *cum* Mavelikkara —Reserved — Scheduled Castes): Most people do not read the Bill.

Pandit K. C. Sharma: I was saying that I have not much of sense of property and I do not understand much of property law. I understand one thing. The conception of property has changed from the mediaeval to the modern. Formerly, it was something static, something in bodies of things. Today, it is not so much static and positional in nature; it is something dynamic and moving. Therefore, the question of property has to be viewed not with a sense of how much enjoyment, how much maintenance, is derived from this, but how much movement, how much capacity to work, how much chances of development it can give to one. That is my approach and the modern conception of property is more dynamic, and it means movement, capacity to work rather than a source of enjoyment, giving the ability not to work at all. That conception has long ago been exploded.

Taking this view, my respectful submission is that in any society with a progressive conception, it is impossible to think that one of the children, simply because she has the female sex should be deprived of anything that is available to another child who has got the male sex. Not because there is enjoyment of property, etc. My attitude is, my point of view is that because of certain disabilities, from the very childhood, the child has a sense of inferiority in comparison to a certain other child, who has reason to feel superior. Some people may not appreciate this; but I have had experience of this in my life. My parents died when I was just a child. I was 8 years of age and my sister was four years old. I was brought up, I took my M.A. degree, supported by my cousins, etc. Every time I went home, I was told that I am a co-sharer of half a share. But, my sister had to lead a most wretched life. It was said that she had to be given to somebody else, as if she was a curse on the family. I stand here

[Pandit K. C. Sharma].

self-condemned, being brought up and educated at the cost of the life of my sister. (*Some Hon. Members*: No, no.) I feel pained, cursed, humiliated. I do not like any other brother should be so humiliated or cursed or downcast. That is my psychological approach. I have not gone to my village to take the rent of my property. I have not gone to my village after 1930 when I joined the movement to collect the fruits in my groves or to live in my old house. I kicked off the whole thing as something sinful. The distaste of that property was the distinction between my sister and myself and nothing else. I want money; I want comfort; but I do not want it at the cost of the wretchedness of life caused to my sister, born in the same family and of the same parents. It is something sinful. I cannot stand that.

Some hon. friend said that I am talking of this because the leader has spoken. One thing I have learnt in my life: 'to be courageous to look straight into the eye of a man and tell him in his face, to go direct to hell.' I recognise no leadership to sit in judgement on my conscience. This lesson I have learnt. I do not wish that any man should have the audacity to teach this sort of a lesson to me. I regard such a man as a corrupt....

Mr. Chairman: Order, order.

Pandit K. C. Sharma:.... corrupt and distasteful thing existing in the form of humanity.

Mr. Chairman: The hon. Member should speak on the Bill and not on a personal question or an episode which happened some time ago.

Pandit K. C. Sharma: I am not talking of personal matters.

Mr. Chairman: Quite right. Then when the episode happened the hon. Member was quite eloquent and said all that he had to say and yet he wants to utilise this occasion to go back to the same episode. That is not correct.

Pandit K. C. Sharma: What I want to say is that my approach to this question is more psychological rather than economic.

My second submission is this. In the future structure of society, the difference between a man and a woman is likely to be obliterated or lessened, and equal opportunities will be given to girls as they are being given to boys. This phenomenon is not peculiar to India. It is a phenomenon that we see all over the world. Therefore, it is not right to make a distinction with regard to any members, and I beg to submit that possession of property comes somehow to make a distinction between man and woman not so much in the interests of individuals, but much more in the interest of society. Both male and female should work together, work hard and work better. To work better means that they should be developed equally well, and in order to develop equally well, the girls should have equal rights as the boys.

Having said this, I do not want that property should be fragmented by giving an equal share to so many claimants. That is, the number of heirs should be reduced. It is no use distributing the property among fifty people because that creates unnecessary litigation and lessens the use of the property when it can be useful in the case of a few. The fundamental principle is that under one roof all the children should be treated on an equal basis, but once a child or a person is somewhere well placed in a different society at a distance, it is no use in the name of equality of abstract justice, partitioning the property and nullifying the little use it could be of to anybody. What I beg to submit is that excepting this psychological condition that no child should feel inferior to another child under the same roof, the use of the property should be maintained and at the same time it should not be parti-

tioned to the extent that it would become a useless thing simply on the ground of some abstract conception of equal right. That is my submission. Therefore, I urge on the hon. Minister that the question of these heirs should be revised and carefully looked into with the idea that property must have in the long run some use. It should not be partitioned so that its utility comes to be very little, while, on the other hand, it increases litigation, with so many persons claiming the property.

I also do not want this exclusion of joint Hindu property. My submission is that the daughter should inherit along with the son, under any system of law. It is not a question whether this is this system or that. The question simply is that in our Constitution and in the cultural structure of the world over it has been recognised that there should be no disability because of sex, that there should be no discrimination between man and woman, that the opportunity of growth should be equally provided to the girl as it is provided to the boy. Having accepted this, I do not want that any system of law, simply because of some conception in the long past, should be allowed to exist to the detriment of the poor girls.

Shri Venkataraman: I am in favour of the Bill only with certain modifications, and not otherwise.

The Bill seeks to exclude a very large percentage of the Hindu population from its operation. The joint family system of the *Mitakshara* school, as you know, is the largest prevailing school of thought and the *Dayabhaga* is confined only to the fortunate province of Bengal. If we introduce a Bill in which we seek to grant the right of inheritance to property to women and exclude therefrom a very large section of the Hindu community, then we will be only doing justice apparently, but not real justice.

Shri Rane (Bhusaval): Justice by instalment.

Shri Venkataraman: It will not be by instalment even. My friend says we will first start with *Dayabhaga* and then by instalments we can introduce to *Mitakshara*. I do not agree with him, because when we first come to legislate for a large population, it would be wrong to exclude a certain section of people and then tell them "you wait for your day"—and we do not know when. As you yourself said, whenever we try to legislate, we should try to bring in as much of the population as possible within the ambit of that legislation.

Let us examine the reason for the exclusion of the joint Hindu family of the *Mitakshara* school from the operation of this law. It is said that theoretically property passes by survivorship and that in a survivorship it is taken on the male line, and therefore, inherently, legally, the daughter is not a person within the meaning of a joint Hindu family.

Shri Pataskar: That is not the reason. May I explain for a minute why in this Bill the whole of the *Mitakshara* joint family is excluded. I explained it in the other House, that as we decided to take it in parts and this part came before the part relating to what is to be done in respect of the joint family, this has been put, and I have given an indication as to what my view there is, and I suggested it in the Select Committee. It is my view, and I have made no secret of it, that when deciding this question, that also will have to be looked into. Of course, what the Select Committee will decide is a different matter, but there is no other reason excepting this, that as that part is still not even introduced or dealt with, it was put here, not with a view to exclude that large number from it. Of course, if it is decided that there should be same thing like *Dayabhaga* uniformly, there will be no difficulty, and if it is the decision of the Select Committee to keep the *Mitakshara* family, probably that can be done. I have made it perfectly clear, and that is the only reason.

[Shri Pataskar].

otherwise, there is no reason that so far as Government is concerned they should want to decide behind the back of anybody as to what should be done or not.

Shri Venkataraman: I am really very grateful to the Law Minister for making it clear. By a bad argument I have drawn a good result, but I was referring to the arguments advanced before the Rau Committee.

Mr. Chairman: He referred to it in his opening speech also.

Shri Venkataraman: I did not make it clear. Before the Rau Committee all the legal pandits who appeared and exchanged their legal knowledge, were in favour of exclusion of *Mitakshara* for various reasons, one of which is this. If you look at the opinion of the people governed by the *Mitakshara* school itself, they are not very much in favour of the continuance of the joint family system.

Dr. Ram Subhag Singh (Shahbad South): No, no. You are wrong.

Shri Venkataraman: My friend's "no" only represents his opinion, but my statement is based on....

Dr. Ram Subhag Singh: I represent the majority view of my area.

Shri Venkataraman: But what I am stating represents the opinion of the experts, the leaders of thought.

Dr. Ram Subhag Singh: But the experts never represent the majority view.

Shri Venkataraman: I do not want to enter into an argument with regard to what the experts represent, but I do want to say what even the experts think on this matter. Giving evidence before the Rau Committee, no less a person than Sir Srinivasa Varadachariar, Retired Judge of the Federal Court, a man who is considered in Madras to be a great authority on Hindu law, said as follows: It is in the Rau Committee's Report on page 17:

> "Sir Srinivasa Varadachariar, the Retired Judge of the Federal Court, whose knowledge and mastery of the Hindu law are beyond question, and who freely placed his invaluable learning at the disposal of the Committee, had counselled us that the best legislation, as in fact it is the simplest, is to substitute the *Dayabhaga* for the *Mitakshara* system."

Mr. Chairman: In the Bill of Dr. Ambedkar also such a view was taken originally.

I think the hon. Member is likely to take long. The House will now adjourn till 10-30 on the 7th.

The Lok Sabha then adjourned till Half Past Ten of the Clock on Saturday the 7th May, 1955.